

HOUSE REVENUE AND TAXATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0401

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes between the text of the proposed rule and text of the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 6, 2004, Idaho Administrative Bulletin, Vol. 04-10, pages 483 through 511.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Janice Boyd, at (208) 334-7530.

DATED this 17th day of November, 2004.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and

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purpose of the proposed rulemaking:

Rule 032: Amend Income Tax Rule 032 to correct references to the Soldiers' and Sailors' Civil Relief Act which is now the Servicemembers Civil Relief Act.

Rule 075: Amend Income Tax Rule 075 to add the table for the income tax brackets and rates for calendar year 2004.

Rule 120: Amend Income Tax Rule 120 to remove the fifty-percent (50%) limitation on the amount of long-term care insurance that is deductible and to clarify that the fifty-percent (50%) limitation was applicable for taxable years beginning between January 1, 2001 and December 31, 2003.

Rule 121: Amend Income Tax Rule 121 to clarify the types of railroad retirement benefits that qualify for the Idaho deduction allowed by Section 63-3022(l), Idaho Code.

Rule 122: Amend Income Tax Rule 122 to add information related to the new deduction for dividends and distributions paid by a subsidiary to a mutual insurance holding company or intermediate holding company.

Rule 130: Amend Income Tax Rule 130 to add the definition of disabled found in Section 63-701, Idaho Code that is referenced in the statute and to add examples related to unremarried widows and how they compute the retirement benefits deduction.

Rule 193: Amend Income Tax Rule 193 to remove the fifty-percent (50%) limitation on the amount of long-term care insurance that is deductible and to clarify that the fifty-percent (50%) limitation was applicable for taxable years beginning between January 1, 2001 and December 31, 2003. Change the calculations in the tables accordingly.

Rule 719: Amend Income Tax Rule 719 to clarify who a qualifying taxpayer is with regard to claiming the property tax exemption in lieu of the investment tax credit. Add a reference to another income tax rule to aid unitary taxpayers in determining whether they meet the negative Idaho taxable income requirement to qualify for the property tax exemption.

Rule 720: Amend Income Tax Rule 720 to remove the reference to the sunset date for the credit for Idaho research activities in accordance with legislation that removed the ending effective date for this credit.

Rule 746: Amend Income Tax Rule 746 to discuss the requirements and calculations of the credit for qualifying new employees in light of HB651 passed in 2004, which enacted a one thousand dollar (\$1,000) credit in addition to the existing five hundred dollar (\$500) credit.

Rule 750: Amend Income Tax Rule 750 to remove the reference to the sunset date for the broadband equipment investment credit in accordance with legislation that removed the ending effective date for this credit.

Rule 770: Amend Income Tax Rule 770 to correct a reference to the Soldiers' and Sailors' Civil Relief Act which is now the Servicemembers Civil Relief Act.

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Rule 871: Amend Income Tax Rule 871 to correct information regarding the withholding of wages earned by water carrier employees who are covered by Title 46, Section 11108, United States Code.

Rule 872: Amend Income Tax Rule 872 to correct information about the filing of returns as modified by 2004 legislative changes. Delete information regarding Forms W-2, which is being moved to new Rule 874 to reduce the length of the rule. Organize rule more logically.

Rule 874: Promulgate new Income Tax Rule 874 to address Forms W-2, which information had been in Income Tax Rule 872.

Rule 880: Amend Income Tax Rule 880 to require that a timely claim for refund include the taxpayer's recalculation of the Idaho tax on an Idaho amended return to be consistent with Income Tax Rule 890, which addresses changes to a taxpayer's return due to a federal audit. Add qualifying private delivery service to information discussing duplicate returns and the mailing of a return consistent with 2004 legislative changes.

Rule 895: Amend Income Tax Rule 895 to add qualifying private delivery service to information discussing duplicate returns and the mailing of a return consistent with 2004 legislative changes.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 24th day of August, 2004.

Janice Boyd, Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

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032. MEMBERS OF THE ARMED FORCES (RULE 032).

01. Idaho Residency Status. Section 57411 of the ~~*Soldiers' and Sailors'*~~ *Servicemembers* Civil Relief Act provides that an individual on active duty with the United States Armed Forces is not a resident of or domiciled in Idaho solely as a result of being stationed in Idaho. (3-20-97)(____)

a. A qualifying service member is an Idaho resident only if he is domiciled in Idaho for the entire taxable year. The domicile of a qualified service member is presumed to be that member's military home of record until the qualified service member establishes a new domicile. (3-20-97)

b. A qualified service member who is domiciled in Idaho for less than the entire taxable year is a part-year resident. (3-20-97)

c. A qualified service member who is not domiciled in Idaho anytime during the taxable year is a nonresident. (3-20-97)

d. A member of the armed forces meeting the safe harbor exception set forth in Section 63-3013(2), Idaho Code, is not considered a resident of Idaho, even though Idaho is the person's military home of record. Any individual meeting the safe harbor exception to residency status is considered either a nonresident or part-year resident. (4-5-00)

e. The ~~*Soldiers' and Sailors'*~~ *Servicemembers* Civil Relief Act does not affect the Idaho residency status of a spouse of a qualified service member. The spouse of a qualified service member shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. (3-20-97)(____)

02. Active Duty Military Pay. (3-20-97)

a. Section 57411 of the ~~*Soldiers' and Sailors'*~~ *Servicemembers* Civil Relief Act provides that the active duty military pay of a qualified member of the United States Armed Forces who is not domiciled in Idaho is exempt from Idaho income tax. The active duty military pay is not considered income from services performed within, or from sources within, Idaho. See Section 63-3026A(3)(c), Idaho Code. (3-20-97)(____)

b. The active duty military pay of a service member who is domiciled in Idaho is subject to Idaho income tax. However, Section 63-3022(h), Idaho Code, provides that compensation paid by the United States Armed Forces for military service performed outside Idaho is deducted from taxable income in determining the member's Idaho taxable income. See Section 63-3022(h), Idaho Code, for the specific qualifications of this deduction. (3-30-01)

03. Military Separation Pay. Military separation pay received for voluntary or involuntary separation from active military service is not considered active duty military pay. Therefore, Subsection 032.02 of this rule does not apply. (3-20-97)(____)

a. Military separation pay is included in Idaho taxable income only if the recipient is domiciled in or residing in Idaho when the separation pay is received. (3-20-97)

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b. For purposes of this rule, a former active duty service member whose home of record at the time of separation from the military was a state other than Idaho is not deemed to be residing in Idaho if he moves from Idaho within thirty (30) days from the date of separation from active duty. (3-20-97)

04. Nonmilitary Income. All Idaho source income earned by a military service member is subject to Idaho taxation except as expressly limited by the Idaho Income Tax Act and these rules. (3-20-97)

05. Nonmilitary Spouse. Subsection 032.02 of this rule does not apply to the income earned by a nonmilitary spouse of a military service member. If the nonmilitary spouse is an Idaho resident, he is subject to Idaho taxation on his income from all sources. If the nonmilitary spouse is a nonresident or a part-year resident, he is subject to Idaho taxation on his income from all sources earned while residing in or domiciled in Idaho, plus his income from Idaho sources earned while not residing and not domiciled in Idaho. (~~3-20-97~~)()

(BREAK IN CONTINUITY OF SECTIONS)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).

Section 63-3024, Idaho Code.

(3-20-04)

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate, beginning with calendar year 1987, are identified in Subsection 075.03 of this rule. For taxable years beginning after December 31, 1999, the Idaho income tax brackets are adjusted for inflation. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that taxable year in Subsection 075.03 of this rule shall apply in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (~~3-20-04~~)()

02. Tax Computation.

(5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (~~3-20-04~~)()

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household shall be twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (5-3-03)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax would be computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount would then be multiplied by two (2). (5-3-03)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

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- a.** For taxable years beginning in 1987 through 1999:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,000.00	\$0.00	2% of taxable income
\$1,000.00	\$2,000.00	\$20.00	4% of the amount over \$1,000.00
\$2,000.00	\$3,000.00	\$60.00	4.5% of the amount over \$2,000.00
\$3,000.00	\$4,000.00	\$105.00	5.5% of the amount over \$3,000.00
\$4,000.00	\$5,000.00	\$160.00	6.5% of the amount over \$4,000.00
\$5,000.00	\$7,500.00	\$225.00	7.5% of the amount over \$5,000.00
\$7,500.00	\$20,000.00	\$412.50	7.8% of the amount over \$7,500.00
\$20,000.00 or more		\$1,387.50	8.2% of the amount over \$20,000.00

(3-20-04)

- b.** For taxable years beginning in 2000:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,022.00	\$0.00	1.9% of taxable income
\$1,022.00	\$2,044.00	\$19.42	3.9% of the amount over \$1,022.00
\$2,044.00	\$3,066.00	\$59.28	4.4% of the amount over \$2,044.00
\$3,066.00	\$4,088.00	\$104.25	5.4% of the amount over \$3,066.00
\$4,088.00	\$5,110.00	\$159.44	6.4% of the amount over \$4,088.00
\$5,110.00	\$7,666.00	\$224.85	7.4% of the amount over \$5,110.00
\$7,666.00	\$20,442.00	\$413.99	7.7% of the amount over \$7,666.00
\$20,442.00 or more		\$1,397.74	8.1% of the amount over \$20,442.00

(3-20-04)

- c.** For taxable years beginning in 2001:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,056.00	\$0.00	1.6% of taxable income
\$1,056.00	\$2,113.00	\$16.90	3.6% of the amount over \$1,056.00
\$2,113.00	\$3,169.00	\$54.93	4.1% of the amount over \$2,113.00
\$3,169.00	\$4,226.00	\$98.25	5.1% of the amount over \$3,169.00

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IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
\$4,226.00	\$5,282.00	\$152.13	6.1% of the amount over \$4,226.00
\$5,282.00	\$7,923.00	\$216.57	7.1% of the amount over \$5,282.00
\$7,923.00	\$21,129.00	\$404.09	7.4% of the amount over \$7,923.00
\$21,129.00 or more		\$1,381.30	7.8% of the amount over \$21,129.00

(3-20-04)

d. For taxable years beginning in 2002:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,087.00	\$0.00	1.6% of taxable income
\$1,087.00	\$2,173.00	\$17.38	3.6% of the amount over \$1,087.00
\$2,173.00	\$3,260.00	\$56.50	4.1% of the amount over \$2,173.00
\$3,260.00	\$4,346.00	\$101.04	5.1% of the amount over \$3,260.00
\$4,346.00	\$5,433.00	\$156.46	6.1% of the amount over \$4,346.00
\$5,433.00	\$8,149.00	\$222.73	7.1% of the amount over \$5,433.00
\$8,149.00	\$21,730.00	\$415.59	7.4% of the amount over \$8,149.00
\$21,730.00 or more		\$1,420.60	7.8% of the amount over \$21,730.00

(3-20-04)

e. For taxable years beginning in 2003:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,104.00	\$0	1.6% of taxable income
\$1,104.00	\$2,207.00	\$17.66	3.6% of the amount over \$1,104.00
\$2,207.00	\$3,311.00	\$57.39	4.1% of the amount over \$2,207.00
\$3,311.00	\$4,415.00	\$102.64	5.1% of the amount over \$3,311.00
\$4,415.00	\$5,518.00	\$158.93	6.1% of the amount over \$4,415.00
\$5,518.00	\$8,278.00	\$226.25	7.1% of the amount over \$5,518.00
\$8,278.00	\$22,074.00	\$422.16	7.4% of the amount over \$8,278.00
\$22,074.00 or more		\$1,443.06	7.8% of the amount over \$22,074.00

(3-20-04)

f. For taxable years beginning in 2004:

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IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
<u>At least</u>	<u>But less than</u>	<u>Is</u>	<u>Plus</u>
<u>\$0.00</u>	<u>\$1,129.00</u>	<u>\$0</u>	<u>1.6% of taxable income</u>
<u>\$1,129.00</u>	<u>\$2,258.00</u>	<u>\$18.06</u>	<u>3.6% of the amount over \$1,129.00</u>
<u>\$2,258.00</u>	<u>\$3,387.00</u>	<u>\$58.70</u>	<u>4.1% of the amount over \$2,258.00</u>
<u>\$3,387.00</u>	<u>\$4,515.00</u>	<u>\$104.98</u>	<u>5.1% of the amount over \$3,387.00</u>
<u>\$4,515.00</u>	<u>\$5,644.00</u>	<u>\$162.55</u>	<u>6.1% of the amount over \$4,515.00</u>
<u>\$5,644.00</u>	<u>\$8,466.00</u>	<u>\$231.41</u>	<u>7.1% of the amount over \$5,644.00</u>
<u>\$8,466.00</u>	<u>\$22,577.00</u>	<u>\$431.78</u>	<u>7.4% of the amount over \$8,466.00</u>
<u>\$22,577.00 or more</u>		<u>\$1,475.95</u>	<u>7.8% of the amount over \$22,577.00</u>

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(BREAK IN CONTINUITY OF SECTIONS)

120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).

Section 63-3022, Idaho Code.

(3-20-97)

01. State And Local Income Tax Refunds. Subtract from taxable income state and local income tax refunds included in taxable income, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code.

(3-15-02)

02. Idaho Net Operating Loss. As provided in Section 63-3022(c), Idaho Code, subtract the Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and Rules 200 through 210 of these rules. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss.

(7-1-99)

03. Income Not Taxable By Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax, if included in taxable income. Income exempt from taxation by Idaho includes the following:

(7-1-99)

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules.

(7-1-99)

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each

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lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income.

(4-5-00)

04. Donated Technological Equipment. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, subtract the fair market value of technological equipment donated to qualifying institutions.

(4-5-00)

05. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for ~~fifty percent (50%)~~ the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction was allowed for fifty percent (50%) of the amount of the premiums paid during the taxable year.

~~(5-3-03)~~()

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes shall be computed without regard to the special first-year depreciation allowance.

(3-20-04)

a. Depreciation. Subtract the amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes.

(3-20-04)

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions shall apply in computing the Idaho capital loss allowed.

(3-20-04)

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction.

(3-20-04)

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, subtract the federal gain and the Idaho loss. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000).

(3-20-04)

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho losses. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200).

(3-20-04)

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iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income.

(3-20-04)

121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (RULE 121).

Section 63-3022, Idaho Code.

(3-20-97)

01. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following:

(7-1-99)

a. Certain income earned by American Indians. See Rule 033 of these rules. (5-3-03)

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho.

(3-20-97)

02. Military Compensation for Service Performed Outside Idaho. As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules.

(3-30-01)

03. Standard or Itemized Deduction. As provided in Section 63-3022(j), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes.

(3-30-01)

a. If state and local income taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of

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state and local income taxes added back shall be computed by dividing the amount of limited itemized deductions by total itemized deductions before the limitation. This percent shall be rounded to the nearest whole percent. For example, sixty-six and one-half percent (66.5%) shall be rounded to sixty-seven percent (67%). Sixty-six and four-tenths percent (66.4%) shall be rounded to sixty-six percent (66%). This percent is then applied to state and local income taxes to determine the Idaho state and local income tax addback. See Rule 105 of these rules. (3-15-02)

b. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (7-1-99)

c. For taxable year 1999 the standard deduction allowed on a married filing joint return shall be increased by one hundred fifty dollars (\$150). (3-30-01)

d. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)

04. Social Security and Railroad Retirement Benefits. As provided in Section 63-3022(l), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. (3-30-01)

a. The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

b. The term certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: ~~(7-1-99)()~~

i. Annuities, supplemental annuities, and disability annuities, including the Tier I; social security equivalent benefits, and the Tier II, ~~and supplemental benefits paid by the Railroad Retirement Board. Supplemental benefits, for purposes of this rule, include pension amounts;~~ ~~(7-1-99)()~~

ii. ~~Railroad unemployment;~~ ~~(7-1-99)()~~

iii. ~~Sickness~~ benefits. ~~(7-1-99)()~~

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-30-01)

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06. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. (3-20-97)

07. Insulation of an Idaho Residence. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the insulation of an Idaho residence. (3-20-97)

08. Alternative Energy Devices. As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence. (3-20-97)

09. Household and Dependent Care Services. As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

10. Household Deduction for Elderly or Developmentally Disabled Dependents. As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

11. Reparations to Displaced Japanese Americans. As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

12. Capital Gains. As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified property. (3-20-97)

13. Adoption Expenses. As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

14. Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to and interest earned on an Idaho medical savings account. (4-5-00)

15. Idaho College Savings Program. As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. (3-15-02)

16. Health Insurance Costs. A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (5-3-03)

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122. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO CORPORATIONS (RULE 122).

Sections 63-3022 and 41-3821, Idaho Code.

~~(3-20-97)~~()

01. Foreign Dividend Gross-Up. As provided in Section 63-3022(f), Idaho Code, subtract the amount reported as a dividend pursuant to Section 78, Internal Revenue Code.

~~(3-20-97)~~()

02. Stock Insurance Subsidiary Dividends or Distributions. ()

a. As provided in Section 41-3821, Idaho Code, a mutual insurance holding company or an intermediate holding company shall subtract the amount received as a dividend or distribution from a stock insurance subsidiary. The deduction shall be allowed for taxable years beginning on or after January 1, 2004. ()

b. The deduction allowed by Section 41-3821, Idaho Code, shall not be allowed if the stock insurance subsidiary's Idaho premium tax liability for the preceding taxable year is less than the stock insurance subsidiary would have paid in Idaho income tax had it been subject to Idaho income taxation for that year. The Idaho premium tax liability is the amount of total premium taxes less total premium tax credits allowed. The Idaho income tax it would have paid shall be computed as provided by Section 63-3027, Idaho Code, net of any applicable income tax credits. ()

c. The taxpayer claiming the deduction shall include in its Idaho income tax return for the year the deduction is claimed information that it is entitled to the deduction. Such information shall include the amount of the stock insurance subsidiary's Idaho premium tax for the preceding taxable year and the amount of Idaho income tax it would have paid for such year. ()

(BREAK IN CONTINUITY OF SECTIONS)

130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (RULE 130).

Section 63-3022A, Idaho Code.

(3-20-97)

01. Qualified Benefits. Subject to limitations, the following benefits qualify for the deduction: (3-20-97)

a. Civil service retirement annuities paid by the United States Government. (3-20-97)

b. Retirement benefits paid as a result of participating in the firemen's retirement fund of the state of Idaho as authorized by Title 72, Chapter 14, Idaho Code. A fireman is entitled to benefits from this fund only if he established eligibility as a paid fireman prior to October 1, 1980. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (3-20-97)

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c. Retirement benefits paid as a result of participating in a policeman's retirement fund of an Idaho city as previously authorized by Sections 50-1501 through 50-1524, Idaho Code. A policeman is entitled to benefits from a city policeman's retirement fund if he was employed by a city as a policeman prior to April 12, 1967, or if he was required to participate in the fund by city ordinance. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (3-20-97)()

d. Retirement benefits paid by the United States Government to a retired member of the military services. (3-20-97)

02. Unremarried Widow. An unremarried widow of a retired civil service employee, retired policeman, retired fireman, or retired member of the military services, who is sixty-five (65) or older, or sixty-two (62) and disabled, is eligible for the deduction, even though the deceased spouse was not eligible at the time of death. In this situation, the amount of the retirement benefits that can be considered for the deduction for the taxable year of the spouse's death is limited to the benefits paid to the spouse as a widow. (3-20-97)()

a. Example. In year one (1), the husband of a married couple filing a joint income tax return received civil service retirement. The husband did not qualify for the Idaho retirement deduction that year since he was not disabled and was only age sixty (60) during that year. In year two (2) the husband died. Because his wife is age sixty-three (63) and disabled in that year, she is eligible for the deduction for year two (2) but only for the amount of her husband's retirement benefits she received that year as a result of being the widow. She may not include in the computation of the deduction any amounts her husband was paid or entitled to prior to his death. For year three (3), she may compute the deduction based on all the retirement benefits she receives as the widow that year. ()

b. Example. Assume the same facts as stated in Paragraph 130.02.a, of this rule, except that the wife is not disabled and does not reach age sixty-five (65) until year four (4). In year one (1) the husband did not qualify for the Idaho retirement deduction. In year two (2) the husband did not qualify for the deduction and the wife did not qualify after her husband died. In year three (3), the wife did not qualify. In year four (4), because the wife reaches age sixty-five (65) during that year, she is entitled to the Idaho retirement deduction on the amount of her husband's retirement she received that year as a result of being a widow. ()

c. Example. Once the widow remarries, she will not be eligible for the Idaho retirement deduction for that year and the years that follow on the amounts she receives from her previous husband's retirement. ()

03. Married Individuals Filing Separate Returns. Married individuals who elect to file married filing separate are not entitled to the deduction allowed by Section 63-3022A, Idaho Code. (7-1-98)

04. Publication of Maximum Deduction. The maximum deduction that may be subtracted when computing Idaho taxable income shall be published each year in the instructions for preparing Idaho individual income tax returns. (3-20-97)

05. Disabled Individual. For purposes of this deduction, an individual is classified as

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disabled if he meets the requirements of Section 63-701, Idaho Code. This includes: ()

a. An individual recognized as disabled by the Social Security Administration pursuant to Title 42, United States Code, or by the Railroad Retirement Board pursuant to Title 45, United States Code, or by the Office of Management and Budget pursuant to Title 5, United States Code; or ()

b. A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States Veterans Administration. ()

(BREAK IN CONTINUITY OF SECTIONS)

193. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE (RULE 193).

Sections 63-3022P and 63-3022Q, Idaho Code. (3-20-04)

01. In General. The amounts paid by an individual taxpayer for health insurance and ~~fifty percent (50%) of the premiums paid for~~ long-term care insurance that are not otherwise deducted or accounted for are allowed as deductions from taxable income. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction allowed for the long-term care insurance premiums was limited to fifty percent (50%) of the amount paid during the taxable year. ~~(3-20-04)~~()

02. Costs Deducted or Accounted For. Deductions are not allowed for health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for. ~~Examples of health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for are costs~~ include amounts: ~~(3-20-04)~~()

a. Paid out of an Idaho medical savings account; (5-3-03)

b. Paid through a cafeteria plan or other salary-reduction arrangement when these costs are paid out of pretax income; or ~~(5-3-03)~~()

c. Deducted as business expenses. (5-3-03)

03. Social Security Medicare Part A. (5-3-03)

a. The payroll tax paid for Medicare A is not considered a medical expense under Section 213, Internal Revenue Code and, therefore, does not qualify for the Idaho deduction for health insurance costs. This applies to individuals who are covered by Social Security or are government employees who paid Medicare tax. (5-3-03)

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b. The amount of premiums a taxpayer pays to voluntarily enroll in Medicare A is deductible under Section 213, Internal Revenue Code, and qualifies for the Idaho deduction for health insurance costs. This applies to individuals who are not covered under Social Security or who were not government employees who paid Medicare tax. (5-3-03)

04. Social Security Medicare Part B. Amounts paid for Medicare B, which is a supplemental medical insurance, qualify for the deduction allowed under Section 213, Internal Revenue Code, and qualify for the Idaho deduction for health insurance costs. (5-3-03)

05. Medical Payments Coverage and Personal Injury Protection of Automobile Insurance. The portion of automobile insurance that covers medical payments coverage or personal injury protection does not qualify for the Idaho deduction for health insurance costs because the insurance coverage is not restricted to the taxpayer, the taxpayer's spouse, or the dependents of the taxpayer. This insurance provides protection to the driver and passengers of the policyholder's car or other injured parties. (5-3-03)

06. Examples of Limitations When Costs Are Otherwise Deducted or Accounted For. If a taxpayer elects to itemize deductions for Idaho purposes and his medical expenses exceed the seven and one-half percent (7.5%) adjusted gross income limitation, the amount that is deducted as an itemized deduction shall first apply to health insurance costs, next to long-term care insurance, and last to other medical expenses. If the premiums exceed the amount deducted as an itemized deduction, the Idaho deductions for health insurance costs and long-term care insurance may be allowed if the premiums were not otherwise deducted or accounted for. If the taxpayer does not elect to itemize deductions for Idaho purposes, or if the taxpayer is unable to deduct medical expenses as an itemized deduction due to the seven and one-half percent (7.5%) adjusted gross income limitation, the full amount of health insurance costs and ~~fifty percent (50%) of the~~ premiums paid for long-term care insurance (~~fifty-percent (50%) of the premiums for taxable years beginning prior to 2004~~), not otherwise deducted or accounted for, qualify for the Idaho deduction. Amounts used for calculating the limitations shall not be less than zero (0). (3-20-04)()

a. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to zero (0): (3-20-04)

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. 7.5% of federal adjusted gross income	\$0
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$16,000
HEALTH INSURANCE	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000

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HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$6,000
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$4,000
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance not otherwise deducted deduction allowed for Idaho (line 11 less lines 13 and 14)	\$0
16. 50% of amount paid for long-term care insurance	\$2,025
17. Long-term care insurance deduction allowed for Idaho (lesser of line 15 or 16)	\$0

(3-20-04)()

b. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to three thousand dollars (\$3,000): (3-20-04)

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. 7.5% of federal adjusted gross income	\$3,000
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$13,000
HEALTH INSURANCE	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$3,000
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$3,000
14. Long-term care insurance deducted elsewhere on the federal return	\$50

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15. Long-term care insurance not otherwise deducted deduction allowed for Idaho (line 11 less lines 13 and 14)	\$1,000
16. 50% of amount paid for long-term care insurance	\$2,025
17. Long-term care insurance deduction allowed for Idaho (lessor of line 15 or 16)	\$1,000

(3-20-04)()

c. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to six thousand dollars (\$6,000): (3-20-04)

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. 7.5% of federal adjusted gross income	\$6,000
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$10,000
HEALTH INSURANCE	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lessor of line 1 or line 6)	\$10,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lessor of line 2 or line 12)	\$0
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance not otherwise deducted deduction allowed for Idaho (line 11 less lines 13 and 14)	\$4,000
16. 50% of amount paid for long-term care insurance	\$2,025
17. Long-term care insurance deduction allowed for Idaho (lessor of line 15 or 16)	\$2,025

(3-20-04)()

d. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to fourteen thousand dollars (\$14,000): (3-20-04)

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HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. 7.5% of federal adjusted gross income	\$14,000
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$2,000
HEALTH INSURANCE	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$2,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$8,000
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$0
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance not otherwise deducted deduction allowed for Idaho (line 11 less lines 13 and 14)	\$4,000
16. 50% of amount paid for long-term care insurance	\$2,025
17. Long-term care insurance deduction allowed for Idaho (lesser of line 15 or 16)	\$2,025

~~(3-20-04)~~()

(BREAK IN CONTINUITY OF SECTIONS)

719. IDAHO INVESTMENT TAX CREDIT -- PROPERTY TAX EXEMPTION IN LIEU OF (Rule 719).

Section 63-3029B, Idaho Code.

(3-20-04)

01. In General. Beginning with calendar year 2003, a qualifying taxpayer may elect a two (2) year property tax exemption on personal property placed in service during the year. Property placed in service prior to January 1, 2003, does not qualify for the exemption. The personal property must be qualified investment as defined in Section 63-3029B, Idaho Code, and Rules 710 through 716 of these rules. If the property tax exemption is elected on an item of personal property, the taxpayer may not earn the investment tax credit on that item. The election is irrevocable.

(3-20-04)

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02. Terms. As used in this rule: (3-20-04)

a. Qualifying Taxpayer. A taxpayer must meet both of the following requirements to qualify for the property tax exemption on personal property. ()

i. The taxpayer's rate of charge or rate of return must not be regulated or limited by federal or state law. For example, if a corporation's rate of return is set by the Public Utilities Commission, that corporation shall not be eligible to claim the property tax exemption on any personal property it may place in service. The corporation may claim investment tax credit on the property if the property is qualified investment under Section 63-3029B, Idaho Code. Each corporation included in a unitary group shall determine whether its rate of charge or rate of return is regulated or limited by federal or state law based solely on its own activities. ()

ii. The taxpayer must have had negative Idaho taxable income in the second preceding taxable year. ()

ab. Second Preceding Taxable Year. The term second preceding taxable year shall mean the second preceding taxable year from the taxable year in which the property is placed in service. (3-20-04)

bc. Used Property Limitation. The term used property limitation shall mean the one hundred fifty thousand dollar (\$150,000) limitation imposed by Section 48, Internal Revenue Code of 1986 prior to November 5, 1990. (3-20-04)

03. Negative Idaho Taxable Income in Second Preceding Taxable Year. ~~To qualify for the property tax exemption on personal property, a taxpayer must have had negative Idaho taxable income in the second preceding taxable year.~~ (3-20-04)()

a. Net Operating Loss Carryovers and Carrybacks. Negative Idaho taxable income in the second preceding taxable year shall be determined prior to the application of any Idaho net operating loss carryforwards or carrybacks. (3-20-04)

b. Taxable year, for purposes of this calculation, includes a short taxable year as defined by the Internal Revenue Code. (3-20-04)

c. Examples of Determining Second Preceding Taxable Year. (3-20-04)

i. A taxpayer files income tax returns on a calendar year basis. During calendar year 2003, the taxpayer placed in service personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were calendar years 2001 and 2002. To qualify for the property tax exemption on personal property, the taxpayer must have had negative Idaho taxable income in calendar year 2001, the second preceding taxable year from calendar year 2003. (3-20-04)

ii. A taxpayer files income tax returns on a June 30 fiscal year end basis. During the fiscal year ended June 30, 2003, the taxpayer placed in service between January 1, 2003, and June 30, 2003, personal property that qualifies for the investment tax credit. The taxpayer's two (2)

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preceding taxable years were fiscal years ended June 30, 2001, and June 30, 2002. To qualify for the property tax exemption, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2001, the second preceding taxable year from fiscal year ended June 30, 2003. Property placed in service during the fiscal year ended June 30, 2003, but in calendar year 2002 does not qualify for the exemption. (3-20-04)()

iii. Assume the same facts as in ~~Subsection~~ Subparagraph 719.03.c.ii., of this rule, except the taxpayer placed the property in service on September 30, 2003, during his fiscal year ended June 30, 2004. To qualify for the property tax exemption on personal property placed in service between July 1, 2003, and June 30, 2004, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2002, the second preceding taxable year from the fiscal year ended June 30, 2004. (3-20-04)()

iv. Assume the same facts as in ~~Subsection~~ Subparagraph 719.03.c.ii., of this rule, except the taxpayer's previous two (2) taxable years included a short taxable year from January 1, 2002, to June 30, 2002, and calendar year 2001. To qualify for the property tax exemption on personal property placed in service between January 1, 2003, and June 30, 2003, the taxpayer must have had negative Idaho taxable income in the taxable year for calendar year 2001, the second preceding taxable year from the fiscal year ended June 30, 2003. (3-20-04)()

v. Table of examples of determining second preceding taxable year.

TAXABLE YEAR PROPERTY PLACED IN SERVICE	FIRST PRECEDING TAXABLE YEAR	SECOND PRECEDING TAXABLE YEAR
Calendar year 2003	Calendar year 2002	Calendar year 2001
Calendar year 2004	Calendar year 2003	Calendar year 2002
Calendar year 2004	Calendar year 2003	Short taxable year beginning February 1, 2002 and ending December 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Fiscal year beginning July 1, 2001 and ending June 30, 2002	Fiscal year beginning July 1, 2000 and ending June 30, 2001
Fiscal year beginning September 1, 2003 and ending August 31, 2004	Fiscal year beginning September 1, 2002 and ending August 31, 2003	Fiscal year beginning September 1, 2001 and ending August 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Short taxable year beginning January 1, 2002 and ending June 30, 2002	Calendar year 2001

(3-20-04)

d. Unitary Taxpayers. Each corporation included in a unitary combined group shall use its Idaho taxable income, as determined pursuant to Section 63-3027, Idaho Code, to determine whether it had negative Idaho taxable income in the second preceding taxable year. See Rule 365 of these rules for more information on how unitary corporations determine their Idaho taxable income. (3-20-04)()

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e. Pass-Through Entities. A taxpayer who is a partnership or an S corporation shall not qualify for the property tax exemption unless the total of its net business income apportioned to Idaho and its nonbusiness income or loss allocated to Idaho is negative for the second preceding taxable year. (3-20-04)

f. Return Not Filed. If a taxpayer has not filed an Idaho income tax return for the second preceding taxable year so that the loss can be verified, the taxpayer shall not be entitled to the exemption. (3-20-04)

04. Used Property Limitation. (3-20-04)

a. In General. The cost of used property that a taxpayer may take into account for any taxable year in computing qualified investment shall not exceed one hundred fifty thousand dollars (\$150,000). This includes the cost of property the taxpayer placed in service during the taxable year and also his share of the cost of property placed in service during the taxable year by a partnership, S corporation, estate or trust. Because property must be qualified investment to qualify for the property tax exemption, the taxpayer is limited to one hundred fifty thousand dollars (\$150,000) for purposes of determining the property tax exemption. (3-20-04)

b. Selection of Items of Used Property. If the cost of the taxpayer's used property eligible for the investment tax credit exceeds the used property limitation, the taxpayer must select the particular items of used property the cost of which is to be taken into account in computing qualified investment. When the taxpayer selects a particular item, the entire cost or the taxpayer's share of cost of the particular item must be taken into account unless the one hundred fifty thousand dollar (\$150,000) limitation is exceeded. For example, if a taxpayer places in service during the taxable year three (3) items of used property, each with a cost of sixty thousand dollars (\$60,000), the taxpayer must select the entire cost of two (2) of the items and only thirty thousand dollars (\$30,000) of the cost of the third item. The taxpayer may not select a portion of the cost of each of the three (3) items. The remaining thirty thousand dollars (\$30,000) of the third item shall not qualify for the investment tax credit nor the property tax exemption since it is not qualified investment. The selection by a taxpayer shall be made by taking the cost of the used property into account in computing the investment tax credit or the property tax exemption for a taxable year. (3-20-04)

c. Electing Property Tax Exemption on Selected Used Property Items. Once the taxpayer has selected the particular items of used property, the cost of which is to be taken into account in computing qualified investment, the taxpayer shall determine whether he may elect the property tax exemption on the items selected. If an item qualifies as personal property and the taxpayer had a negative Idaho taxable income in the second preceding taxable year, the taxpayer may elect to claim the property tax exemption on the item in lieu of earning the investment tax credit. For example, assume the same facts as in ~~Subsection~~ Paragraph 719.04.b., of this rule. The taxpayer may elect the property tax exemption on any of the three (3) items, limited to the amount included as qualified investment if the item qualifies as personal property and the taxpayer had a negative Idaho taxable in the second preceding taxable year. ~~(3-20-04)~~()

720. CREDIT FOR IDAHO RESEARCH ACTIVITIES -- IN GENERAL (RULE 720).

Section 63-3029G, Idaho Code. (3-15-02)

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01. Credit Allowed. (3-15-02)

a. The credit for Idaho research activities allowed by Section 63-3029G, Idaho Code, applies to taxable years beginning on and after January 1, 2001 ~~and before December 31, 2005.~~
(3-15-02)()

b. The Idaho credit shall be computed using the same definitions of qualified research expenses, qualified research, basic research payments, and basic research as are found in Section 41, Internal Revenue Code, except only the amounts related to research conducted in Idaho qualify for the Idaho credit. If an expense does not qualify for the federal credit under Section 41, Internal Revenue Code, it will not qualify for purposes of the Idaho credit. (3-15-02)

02. Limitations. The credit for Idaho research activities allowable in any taxable year shall be limited as follows: (3-15-02)

a. Tax Liability. The total amount of any credit for Idaho research activities claimed during a taxable year may not exceed one hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the credit for Idaho research activities, regardless of whether the credit for Idaho research activities results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the credit for Idaho research activities is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-15-02)

03. Carryovers. The carryover period for the credit for Idaho research activities is fourteen (14) years. (3-15-02)

04. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)

05. Short Taxable Year Calculations. Short taxable year calculations provided in Section 41, Internal Revenue Code, and related regulations shall be used to compute the Idaho credit if the taxpayer must use short taxable year calculations for purposes of computing the federal credit. If the taxpayer makes the election in Section 63-3029G(1)(a)(i), Idaho Code, and the taxpayer's taxable year is not a calendar year for 2001, the taxpayer must use the federal short taxable year calculations to compute the credit applicable for the period beginning January 1, 2001, and ending the last day of the taxpayer's fiscal year ending in 2001. (3-15-02)()

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(BREAK IN CONTINUITY OF SECTIONS)

746. CREDIT FOR QUALIFYING NEW EMPLOYEES -- CALCULATIONS USED TO DETERMINE THE CREDIT AND CREDIT CARRYOVER (RULE 746).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning ~~in 2000 and after 2001~~ on and after January 1, 2004. (5-3-03)(____)

01. In General. ~~A taxpayer is allowed a credit of five hundred dollars (\$500) per new employee in the taxable year. To compute the credit for qualifying new employees, the taxpayer shall first calculate the number of employees in the revenue-producing enterprise. For taxable years beginning on and after January 1, 2004, an employer may be able to earn either a one thousand dollar (\$1,000) credit or a five hundred dollar (\$500) credit for a qualifying new employee. However, the employer cannot earn both credits for the same employee. The applicable credit rate depends on whether the new employee meets certain wage and benefit criteria. If the new employee does not meet the criteria for either credit rate, the employer may not claim the credit for such new employee.~~ (3-20-04)(____)

02. Qualifying for the One Thousand Dollar (\$1,000) Credit. (____)

a. The new employee must meet both of the following criteria to qualify for the one thousand dollar (\$1,000) credit: (____)

i. He must have received annual earnings at an average rate of fifteen dollars and fifty cents (\$15.50) or more per hour worked; and (____)

ii. He must have been eligible to receive employer provided coverage under an accident or health plan described in Section 105, Internal Revenue Code. (____)

b. The new employee does not have to be employed in a revenue-producing enterprise to qualify for the one thousand dollar (\$1,000) credit. (____)

03. Qualifying for the Five Hundred Dollar (\$500) Credit. If a new employee does not meet the criteria for the one thousand dollar (\$1,000) credit, the employer may be eligible to claim the five hundred dollar (\$500) credit. To qualify for the five hundred dollar (\$500) credit, the new employee must have been employed in a revenue-producing enterprise as defined in Section 63-3029E, Idaho Code. (____)

024. Calculating Number of Employees. (3-30-01)

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Section 63-3029E(1)(a), Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (3-20-04)

i. The employee must have been subject to Idaho income tax withholding. (3-20-04)

ii. ~~The employee must have been employed by the taxpayer in a revenue-producing enterprise creating value-added natural resource products.~~ (3-20-04)

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iii. The employee must have been employed by the ~~taxpayer~~ employer on a regular full-time basis or on a part-time basis if customarily performing such duties at least twenty (20) hours per week. Leased employees do not qualify as employees of the lessee. ~~(3-20-04)~~()

i+ii. The employee must have been performing such duties for the ~~taxpayer~~ employer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. ~~(3-20-04)~~()

iv. The employee must have been covered for Idaho unemployment insurance purposes. (3-20-04)

b. Idaho Department of Commerce and Labor Reports. The ~~taxpayer~~ employer should begin with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. ~~(3-30-01)~~()

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-30-01)

035. Calculating the Number of New Employees. (3-30-01)

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-30-01)

i. The number of employees for the prior taxable year; or (3-30-01)

ii. The average of the number of employees for the three (3) prior taxable years. (3-30-01)

b. The requirements as to who qualifies for the calculation of number of employees in Paragraph 746.02.a., of this rule shall apply in computing the number of employees in Subparagraphs 746.05.a.i., and 746.05.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. If the ~~taxpayer~~ employer treats the entire business as a revenue-producing enterprise under ~~Subsection~~ Paragraph 745.04.a., of these rules, the calculations in ~~Subsections~~ Subparagraphs 746.035.a.i., and 746.035.a.ii., of this rule shall be made on a consistent basis. The number of employees for the prior taxable year and the average for the three (3) prior taxable years shall be made presuming the entire business was a revenue-producing enterprise for those years. ~~(3-30-01)~~()

c. ~~The requirements as to who qualifies for the calculation of number of employees in Subsection 746.02.a. shall apply in computing the number of employees in Subsections 746.03.a.i. and 746.03.a.ii. Calculations used in computing the credit earned in taxable years beginning in 2001 when the credit was not limited to employees in a revenue-producing enterprise may not be used in computing the credit earned in taxable years beginning after 2001. The number of new~~

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employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. (3-20-04)()

d. The employer shall determine the number of new employees who qualify for the one thousand dollar (\$1,000) credit and the number who qualify for the five hundred dollar (\$500) credit. If the new employees do not meet the criteria set forth in Sections 63-3029E and 63-3029F, Idaho Code, and this rule, the employer shall not earn the credit. For example, if a new employee has an average wage rate of ten dollars (\$10) and the employer's business does not qualify as a revenue-producing enterprise, the new employee does not qualify for either the one thousand dollar (\$1,000) credit or the five hundred dollar (\$500) credit. ()

046. Computing The Credit Earned. ~~The number of new employees shall be rounded to the nearest tenth (.1) and must equal or exceed one (1) or no credit is earned.~~ The credit earned is the lesser of the following: amounts determined in Paragraphs 746.06.a., and 746.06.b., of this rule. (3-30-01)()

a. The number of new employees ~~multiplied by~~ who qualify for the five hundred dollars (\$500) credit multiplied by five hundred dollars (\$500), plus the number of new employees who qualify for the one thousand dollar (\$1,000) credit multiplied by one thousand dollars (\$1,000); or (3-30-01)()

b. The net income of the ~~revenue-producing enterprise~~ trade or business, as determined pursuant to Rule 747 of these rules, multiplied by three and one-quarter percent (3.25%). (3-30-01)()

057. Limitations. In the year the credit for qualifying new employees is earned or claimed: (3-20-04)

~~**a.** Taxable years beginning in 2000 and 2002. This credit and all other credits may not exceed forty five percent (45%) of the taxpayer's income tax liability for that year. The credit for taxes paid to other states, grocery credit, and the credit for maintaining a home for a family member age sixty five (65) or older or developmentally disabled dependents are not subject to this limitation. (3-20-04)~~

~~**ba.** Taxable years beginning in 2003 and after. This credit and all other credits may not exceed fifty percent (50%) of the taxpayer's income tax for that year after deducting the credit for taxes paid to other states. The credit for taxes paid to other states is not subject to this limitation. (3-20-04)()~~

~~**eb.** See Section 63-3029HP, Idaho Code, and Rule 799 of these rules for the priority order of credits. (3-20-04)()~~

068. Carryover. To claim the carryover, the ~~taxpayer~~ employer must maintain the employment level on which the credit was computed during the three (3) succeeding taxable years to which the unused credit is carried. If the employment level that generated the credit decreases, the ~~taxpayer~~ employer is not required to recapture the credit claimed in previous taxable years. However, the ~~taxpayer~~ employer shall recompute the credit based on the reduced employment level to determine the correct amount of carryover. (3-30-01)()

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079. Pass-Through Entities. See Rule 785 of these rules for pass-through entities and the calculation of credits. (3-15-02)

0810. Unitary Taxpayers. (3-30-01)

a. A corporation may not use the credit for qualifying new employees earned by another member of the unitary group. See Rule 365 of these rules. (3-30-01)

b. Each corporation in a unitary group that claims the credit for qualifying new employees is subject to Section 63-3029~~HP~~HP, Idaho Code, and Rule 799 of these rules for the priority order of credits. (~~3-15-02~~)()

(BREAK IN CONTINUITY OF SECTIONS)

750. BROADBAND EQUIPMENT INVESTMENT CREDIT -- IN GENERAL (RULE 750).
Section 63-3029I, Idaho Code. (3-15-02)

01. Credit Allowed. The broadband equipment investment credit allowed by Section 63-3029I, Idaho Code, applies to investments made during taxable years beginning on and after January 1, 2001 ~~and before December 31, 2005~~. The investment must also meet the requirements of Section 63-3029B, Idaho Code, and related rules as to what constitutes qualified investment. (~~3-15-02~~)()

02. Limitations. The broadband equipment investment credit allowable in any taxable year shall be limited as follows: (3-15-02)

a. The broadband equipment investment credit claimed during a taxable year may not exceed the lesser of: (3-15-02)

i. Seven hundred fifty thousand dollars (\$750,000); or (3-15-02)

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the broadband equipment investment credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the broadband equipment investment credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules.

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(3-15-02)

d. Transferred Credit. Limitations apply to each transferee as if the transferee had earned the credit.

(3-15-02)

03. Carryovers.

(3-15-02)

a. The carryover period for the broadband equipment investment credit is fourteen (14) years.

(3-15-02)

b. See Rule 793 of these rules for the rules regarding the carryover of transferred credit.

(3-15-02)

04. Taxpayers Entitled to the Credit. Rule 711 of these rules shall apply to the broadband equipment investment credit except that limitations referenced in Subsection 711.01 of these rules shall be those limitations as provided in Section 63-3029I, Idaho Code.

~~(3-15-02)~~(____)

05. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits.

(3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

770. GROCERY CREDIT (RULE 770).

Section 63-3024A, Idaho Code.

(3-20-97)

01. Residents Required to File.

(3-20-97)

a. A resident may claim a credit of twenty dollars (\$20) for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho.

(3-15-02)

b. A resident age sixty-five (65) or older may claim a credit of thirty-five dollars (\$35) for each personal exemption described in ~~Subsection Paragraph~~ 770.01.a., of this rule that represents an individual age sixty-five (65) or over.

~~(3-15-02)~~(____)

c. A resident who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund.

(3-20-97)

02. Residents Not Required to File. A resident who is not required to file an Idaho income tax return may be eligible for the credit. If eligible, the individual shall file a claim for

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refund of the credit on a form approved by the Tax Commission on or before April 15 each year. No credit shall be refunded three (3) years after the due date of the claim for refund, including extensions. The following resident individuals are eligible for the credit: (3-20-97)

- a. Individuals age sixty-two (62) or older; (3-20-97)
- b. Disabled veterans; and (3-20-97)
- c. Blind individuals. (3-20-97)

03. Part-Year Residents. A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (3-20-97)

04. Members of the Armed Forces. A member of the United States Armed Forces who is required to file an Idaho income tax return and who is: (3-20-97)

- a. Domiciled in Idaho is entitled to this credit; (3-20-97)
- b. Residing in Idaho but who is a nonresident pursuant to the ~~Soldiers' and Sailors'~~ Servicemembers Civil Relief Act is not entitled to this credit. (~~3-20-97~~)()

05. Spouse or Dependents of Armed Forces Members. A spouse or dependent of a nonresident military person stationed in Idaho may be an Idaho resident or part-year resident. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (3-20-97)

06. Nonresidents. A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

871. STATE INCOME TAX WITHHOLDING REQUIRED (RULE 871).

Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Employers Other Than Farmers. An employer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if: (7-1-99)

- a. The employer is required to withhold for federal purposes; and (7-1-99)
- b. The employee is an Idaho resident; or the employee is a nonresident and compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to the nonresident employee for services performed in Idaho. (7-1-99)

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02. Farmer-Employers. An employer who is a farmer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if: (3-30-01)

- a. The farmer-employer is required to withhold for federal purposes; and (3-30-01)
- b. Compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to the agricultural employee. (3-30-01)

03. Services Performed Within and Without Idaho. An employer is required to withhold only on the portion of the employee's total compensation that is reasonably attributable to services performed in Idaho regardless of his post of duty. Compensation may be allocated to Idaho based on workdays, hours, mileage, or commissions. (7-1-99)

04. Exceptions to Withholding Requirements. Withholding is not required if: (3-20-97)

a. The salaries, wages, tips, bonuses, and other compensation paid by an employer are for services performed wholly outside Idaho regardless of the residency or domicile of either the employer or employee. (3-20-97)

b. The compensation is paid by the United States Armed Forces to a nonresident serving on active duty in Idaho; (3-20-97)

c. The compensation is paid to an interstate transportation employee of a rail carrier covered by Title 49, Section 11502, United States Code, who is a nonresident of Idaho; or (7-1-99)

d. The compensation is paid to an interstate transportation employee of a motor carrier covered by Title 49, Section 14503, United States Code, who is a nonresident of Idaho; or (7-1-99)

e. The compensation is paid to an employee of an interstate air carrier covered by Title 49, Section 40116, United States Code, who is a nonresident of Idaho and earns fifty percent (50%) or less of his compensation in Idaho; or (7-1-99)

f. The compensation is paid to ~~an employee of an interstate water carrier~~ a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or to an individual employed on a fishing vessel or any fish processing vessel covered by Title 49, Section ~~14503~~ 11108, United States Code, ~~who is a nonresident of Idaho and earns fifty percent (50%) or less of his compensation in Idaho; or~~ (7-1-99)()

g. The compensation is exempt from federal withholding. (7-1-99)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).
Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

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01. ~~Filing of Returns~~ Payment of State Income Tax Withheld. (7-1-99)()

a. In General. An employer shall ~~file returns quarterly to report payroll and remit monthly any state income tax withheld. Returns shall be filed on or before the last day of the month following the end of the quarter.~~ These monthly payments are due on or before the 20th day of the following month. However, employers who owe six hundred dollars (\$600) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. (4-5-00)()

b. ~~Farmer-Employers. Generally, an employer who is a farmer shall file returns annually to report payroll and state income tax withheld. However, an employer who is a farmer shall file returns quarterly on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor.~~ Split-Monthly Filers. (4-5-00)()

i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, shall remit the tax withheld based on split-monthly withholding periods. Split-monthly withholding periods begin with the 16th day of the month and end on the 15th day of the following month. Payments for a split-monthly withholding period shall be made no later than five (5) days after the end of the withholding period. ()

ii. Threshold amounts:

<u>Withholding Periods Beginning</u>	<u>Monthly Threshold Amounts</u>	<u>Annual Threshold Amounts</u>
<u>Prior to January 1, 2004</u>	<u>\$5,000.00</u>	<u>\$60,000.00</u>
<u>On or After January 1, 2004, but Before July 1, 2005</u>	<u>\$6,000.00</u>	<u>\$72,000.00</u>
<u>On or After July 1, 2005</u>	<u>\$20,000.00</u>	<u>\$240,000.00</u>

()

iii. Filing status changes will occur only in January. ()

c. ~~Zero Tax Returns. A return shall be filed for each reporting period. For reporting periods in which the employer had no payroll or withheld no tax, the return shall be completed and filed by the due date.~~ Farmer-Employers. Generally an employer who is a farmer shall remit state income tax withheld on or before the last day of February. However, an employer who is a farmer shall remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. (7-1-99)()

02. Filing of Annual Reconciliation Returns. ()

a. In General. Beginning January 1, 2004, an employer shall file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding

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account or withheld Idaho income taxes. Such return shall: ()

- i. Report payroll paid during the preceding calendar year; and ()
- ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. ()

b. Due Date of Reconciliation Returns. The annual reconciliation return shall be filed on or before the last day of January. The Tax Commission may require a shorter filing period and due date. ()

c. Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return shall be completed and filed by the due date. ()

023. Extension of Time to Pay or File Returns. The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the withholding annual reconciliation return. (3-20-97)()

a. The employer shall file a written request by the due date of the withholding payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment shall be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (4-5-00)()

b. The employer shall file ~~a~~ the annual reconciliation return ~~reporting the actual tax withheld for the period~~ within one (1) month of the due date. The tax paid with the extension request shall be shown on the adjustment payment line of the return. Interest from the due date applies to any additional tax due. (3-20-97)()

~~03.~~ ~~Payment of State Income Tax Withheld.~~ (7-1-99)

~~a.~~ ~~In General.~~ ~~An employer shall remit monthly any state income tax withheld. However, employers who owe six hundred dollars (\$600) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter.~~ (3-20-04)

~~b.~~ ~~Split-Monthly Filers.~~ (3-20-04)

~~i.~~ ~~An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subsection 872.03.b.ii., shall remit the tax withheld based on split-monthly withholding periods. Split-monthly withholding periods begin with the 16th day of the month and end on the 15th day of the following month. Payments for a split-monthly withholding period shall be made no later than five (5) days after the end of the withholding period.~~ (3-20-04)

~~ii.~~ ~~Threshold amounts:~~

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WITHHOLDING PERIODS- BEGINNING	MONTHLY THRESHOLD AMOUNTS	ANNUAL THRESHOLD AMOUNTS
Prior to January 1, 2004	\$5,000.00	\$60,000.00
On or After January 1, 2004, but Before July 1, 2005	\$6,000.00	\$72,000.00
On or After July 1, 2005	\$20,000.00	\$240,000.00

(3-20-04)

~~**e.** Farmer employers. Generally an employer who is a farmer shall remit state income tax withheld on or before the last day of February. However, an employer who is a farmer shall remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor.~~

(4-5-00)

~~**04. Employer's Annual Reconciliation.** On or before the last day of February, employers shall file a return reconciling the tax remitted throughout the preceding calendar year and the state income tax withholding reported on the W-2s.~~

(3-20-97)

~~**05. Employee's Wage and Tax Statements.** Federal Form W-2 or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted.~~

(7-1-99)

~~**a.** The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment.~~

(3-20-97)

~~**b.** On or before the last day of February, each employer shall file with the Tax Commission a W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld.~~

(3-20-97)

~~**c.** If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission.~~

(3-20-97)

~~**d.** Each employer with fifty (50) or more Idaho employees who is required to file returns on magnetic media or other machine-readable form by Section 6011, Internal Revenue Code, shall file in a similar manner with Idaho. In addition to the information required by the Internal Revenue Code, the magnetic media or machine-readable form shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file on magnetic media but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed.~~

(3-15-02)

~~**e.** If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee shall include the portion of the employee's total wages reasonably attributed to services performed within Idaho. Wages may be allocated to Idaho based on work~~

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~~days, hours, mileage or commissions.~~

~~(7-1-99)~~

064. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule shall be filed using the proper forms as prescribed by the Tax Commission. The forms shall include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed.

(3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).

Sections 63-3035 and 63-3036, Idaho Code.

()

01. Form and Information Required. Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted.

()

02. Furnishing Forms W-2 to Employees. The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment.

()

03. Filing Forms W-2 With the Tax Commission. On or before the last day of February, each employer shall file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld.

()

04. Corrected Forms W-2. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission.

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05. Employers With Fifty or More Idaho Employees. Each employer with fifty (50) or more Idaho employees who is required to file returns on magnetic media or other machine-readable form by Section 6011, Internal Revenue Code, shall file in a similar manner with Idaho. In addition to the information required by the Internal Revenue Code, the magnetic media or machine-readable form shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file on magnetic media but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed.

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06. Services Performed Within and Without Idaho. If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee shall include the portion of the employee's total wages reasonably attributed to services performed within Idaho. Wages may be allocated to Idaho based on workdays, hours, mileage or

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commissions. ()

07. Extension of Time to File Form W-2. The Tax Commission may allow a one (1) month extension of time to file the W-2s. ()

a. The employer shall file a written request by the due date of the W-2s that identifies the reason for the extension. ()

b. The employer shall file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. ()

8745. -- 879. (RESERVED).

880. CREDITS AND REFUNDS (RULE 880).

Section 63-3072, Idaho Code. (3-20-97)

01. Overpayment. The term overpayment includes: (3-20-97)

a. A voluntary and unrequested payment greater than an actual tax liability. (3-20-97)

b. An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

c. All amounts erroneously or illegally assessed or collected. (3-20-97)

d. The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. (3-20-97)

02. Timely Claim Required for Refund. (3-20-97)

a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. (3-20-97)

~~**b.** The claim for a credit or refund must be in writing and set forth each legal or factual basis in sufficient detail to inform the Tax Commission of the basis of the claim. The Tax Commission may require a taxpayer to submit a written declaration that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. (3-20-97)~~

eb. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. (3-20-97)

03. Amended Returns Required as Refund Claims. ~~A properly signed amended tax~~

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~~return shall constitute a claim for refund. The taxpayer must clearly set forth the amount claimed and explain why and how the original return is amended.~~ The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer shall be declaring that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. (3-15-02)()

04. Closed Issues. The Tax Commission shall deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. (3-20-97)

05. Limitations on Refunds of Withholding and Estimated Payments. The Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. See Section 63-3072(c), Idaho Code. The Tax Commission may not refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. (3-15-02)

06. Reduction or Denial of Refund Claims. If the Tax Commission determines that a refund claim is in error, the Tax Commission shall deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission shall give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors. (3-20-97)

07. Amended Federal Return. Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer's Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution. (7-1-98)

08. Combined Reports -- Final Federal Determination and Change of Filing Method. If the Idaho period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report. (3-20-97)

09. Duplicate Returns. If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer shall submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3072(b),

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Idaho Code.

~~(5-3-03)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

895. PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION OF TAX (RULE 895).

Sections 63-3068 and 63-3069A, Idaho Code. (3-30-01)

01. Federal Determination. The additional one (1) year period of limitation provided in Sections 63-3068(f) and 63-3068(j), Idaho Code, does not begin to run if the final federal determination is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. The Internal Revenue Service and other taxing agencies are not representatives of taxpayers. (3-20-97)

02. State or Territory Determination. The additional one (1) year period of limitation provided in Section 63-3069A(2)(b), Idaho Code, does not begin to run if the final determination of income tax due to another state or territory is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. Taxing agencies of other states or territories are not representatives of taxpayers. (3-30-01)

03. Protest of a Notice of Deficiency. If a taxpayer protests a Notice of Deficiency, the expiration of the period of limitations provided in Section 63-3068, Idaho Code, is suspended. (3-20-97)

04. Waiver of the Period of Limitation. If a taxpayer executes a waiver to extend the period of limitation, the waiver shall state the taxpayer's name as shown on the tax return. If a group return is filed, the waiver shall apply to each corporation included in the combined group. (3-20-97)

05. Duplicate Returns. If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer shall submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3072~~(b)~~68, Idaho Code. ~~(5-3-03)~~(____)

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IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0402

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes between the text of the proposed rule and text of the pending rule.

The proposed Rule 325 is being amended from the propose text to change the word “and” to “or” in Section 325.04. The text of the pending rule is being amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes differ from the proposed text printed in this bulletin. The original text of the proposed rule was published in the October 6, 2004, Idaho Administrative Bulletin, Vol. 04-10, pages 512 through 530.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Janice Boyd, at (208) 334-7530.

DATED this 17th day of November, 2004.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 325: Amend Income Tax Rule 325 in response to Multistate Tax Commission (MTC) regulation changes. Change terms in the definition of affiliated corporation to be consistent with terms used in other multistate income tax rules and add information to the definition of business activity.

Rule 330: Amend Income Tax Rule 330 in response to MTC regulation changes. Delete current information and replace with information from MTC Reg. IV.1.(a)(1) Business And Nonbusiness Income Defined - Apportionment And Allocation. One major change between the current and proposed rules is the recognition of the two tests, the transactional test and the functional test, for determining business income.

Rule 331: Promulgate a new Income Tax Rule 331 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(a)(2), Business And Nonbusiness Income Defined - Business Income and MTC Reg. IV.1.(a)(3), Terms Used in Definition of Business Income and in Application of Definition.

Rule 332: Promulgate a new Income Tax Rule 332 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(a)(4) Business And Nonbusiness Income Defined – Transactional Test.

Rule 333: Promulgate a new Income Tax Rule 333 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(a)(5), Business and Nonbusiness Income Defined – Functional Test.

Rule 334: Promulgate a new Income Tax Rule 334 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(a)(6) Business and Nonbusiness Income Defined – Relationship of Transactional and Functional Tests to U.S. Constitution.

Rule 336: Promulgate a new Income Tax Rule 336 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(c) Business and Nonbusiness Income - Application of Definitions.

Rule 340: Amend Income Tax Rule 340 in response to MTC regulation changes. Delete current information about a single trade or business of a corporation or an affiliated group of corporations and replace with information from MTC Reg. IV.1.(b)(1) Principles for Determining the Existence of a Unitary Business - Unitary Business Principle. Changes to the MTC regulations regarding the definition of a unitary business attempt to synthesize the various court decisions that define a unitary business into the regulations.

Rule 341: Promulgate a new Income Tax Rule 341 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(b)(2)(A) Principles for Determining the Existence of a Unitary Business – Determination of a Unitary Business.

Rule 342: Promulgate a new Income Tax Rule 342 in response to MTC regulation changes.

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Incorporate information from MTC Reg. IV.1.(b)(2)(B) Principles for Determining the Existence of a Unitary Business – Description and Illustration of Functional Integration, Centralization of Management, and Economies of Scale.

Rule 343: Promulgate a new Income Tax Rule 343 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(b)(3) Principles for Determining the Existence of a Unitary Business – Indicators of a Unitary Business.

Rule 344: Promulgate a new Income Tax Rule 344 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(b)(4) Principles for Determining the Existence of a Unitary Business – Commonly Controlled Group of Business Entities.

Rule 345: Repeal Income Tax Rule 345 in response to MTC regulation changes. Information related to the application of definitions of business and nonbusiness income is addressed in proposed new Income Tax Rule 336.

Rule 365: Amend Income Tax Rule 365 in response to MTC regulation changes. Add a new subsection regarding dividends and other intangible income to address when this income should be included in a combined report and when intercompany eliminations are appropriate. This information currently is included in Income Tax Rule 330, but is proposed to be deleted from that rule and moved to Income Tax Rule 365.

Rule 485: Amend Income Tax Rule 485 in response to MTC regulation changes. Add additional information regarding the inclusion of the value of rented property in the property factor from MTC Reg. IV.11.(b) Property Factor: Valuation of Rented Property.

Rule 600: Amend Income Tax Rule 600 in response to Multistate Tax Commission (MTC) regulation changes. Delete the subsection addressing common ownership since a commonly controlled group is addressed in proposed new Income Tax Rule 344. Add a new reference to Rules 340 through 344 for the principles for determining the existence of a unitary business.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 25th day of August, 2004.

Janice Boyd, Tax Policy Specialist

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Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

325. DEFINITIONS FOR PURPOSES OF MULTISTATE RULES (RULE 325).

Section 63-3027, Idaho Code. For purposes of computing the Idaho taxable income of a multistate corporation, the following definitions apply: (3-20-97)

01. Affiliated Corporation and Affiliated Group. An affiliated corporation is a corporation that is a member of a commonly ~~owned~~ controlled group of which the taxpayer is also a member. The commonly ~~owned~~ controlled group is referred to as an affiliated group. Although Idaho generally follows federal tax principles and terminology, Idaho's use of the terms affiliated corporation and affiliated group means a corporation or corporations with over fifty percent (50%) of its voting stock directly or indirectly owned or controlled by a common owner or owners. For information on what constitutes common ~~ownership~~ control, see ~~Subsection 600.01~~ Rule 344 of these rules. (7-1-98)()

02. Allocation. Allocation refers to the assignment of nonbusiness income to a particular state. (3-20-97)

03. Apportionment. Apportionment refers to the division of business income between states in which the business is conducted by the use of a formula containing apportionment factors. (3-20-97)

04. Business Activity. Business activity refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer or to the acquisition, management, or disposition of property that constitute integral parts of the taxpayer's regular trade or business operations. (3-20-97)()

05. Combined Group. Combined group means the group of corporations that comprise a unitary business and are includable in a combined report pursuant to Section 63-3027(t) or 63-3027B, Idaho Code, if the water's edge election is made. (3-20-97)

06. Combined Report. Combined report refers to the computational filing method to be used by a unitary business which is conducted by a group of corporations wherever incorporated rather than a single corporation. (3-20-97)

07. Gross Receipts. (3-15-02)

a. Gross receipts are the gross amounts realized, (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is

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recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold. Gross receipts, even if business income, do not include such items as, for example: (3-15-02)

i. Repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument; (3-15-02)

ii. The principal amount received under a repurchase agreement or other transaction properly characterized as a loan; (3-15-02)

iii. Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock; (3-15-02)

iv. Damages and other amounts received as the result of litigation; (3-15-02)

v. Property acquired by an agent on behalf of another; (3-15-02)

vi. Tax refunds and other tax benefit recoveries; (3-15-02)

vii. Pension reversions; (3-15-02)

viii. Contributions to capital; (3-15-02)

ix. Income from forgiveness of indebtedness; or (3-15-02)

x. Amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code. (3-15-02)

b. Exclusion of an item from the definition of gross receipts is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of Rules 560 through 595 of these rules. (3-15-02)

08. Group Return. A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. When used in these rules, group return refers to this sole return filed by a unitary group. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. (3-20-97)

09. MTC. The Multistate Tax Commission. (3-20-97)

10. Multistate Corporation. A multistate corporation is a corporation that operates in more than one (1) state. For purposes of this definition, state is defined in Section 63-3027(a)(6), Idaho Code. (3-20-97)

11. Unitary Business. Unitary business is a concept of constitutional law defined in decisions of the United States Supreme Court. See Rule 340 of these rules. (7-1-98)

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326. -- 329. (RESERVED).

330. BUSINESS AND NONBUSINESS INCOME DEFINED -- APPORTIONMENT AND ALLOCATION (RULE 330).

Sections 63-3027(a)(1), Idaho Code. Sections 63-3027(a)(1) and 63-3027(a)(4), Idaho Code, require that every item of income be classified either as business income or nonbusiness income. Income for purposes of classification as business or nonbusiness includes gains and losses. Business income is apportioned among jurisdictions by use of a formula. Nonbusiness income is specifically assigned or allocated to one (1) or more specific jurisdictions pursuant to express rules. An item of income is classified as business income if it falls within the definition of business income. An item of income is nonbusiness income only if it does not meet the definitional requirements for being classified as business income. (3-20-97)()

~~01. In General. All transactions and activities of the taxpayer that depend on or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and are transactions and activity arising in the regular course of, and constitute integral parts of, a trade or business. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administering these rules, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.~~ (3-20-97)

~~02. Classification of Income.~~ (3-20-97)

~~a. Classifying income by labels such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., does not determine whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business.~~ (3-20-97)

~~b. The critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. The transactional test is met if income or loss is derived from a transaction in the regular course of business. The functional test is met if income or loss is derived from property acquired, managed or disposed of in the regular course of business. If either the transactional or the functional test is met, the resulting income or loss is business income or loss.~~ (3-20-97)

~~03. Investment Income. Income arising from the ownership or sale or other disposition of investments is presumed to be business income because of the following:~~ (3-20-97)

~~a. The regularity with which most corporate taxpayers engage in investment activities;~~ (3-20-97)

~~b. The source of capital for investments arises in the ordinary course of a taxpayer's business;~~ (3-20-97)

~~c. The income from investments is used in the ordinary course of the taxpayer's business; and~~ (3-20-97)

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~~d. The investment assets are used for general credit purposes. (3-20-97)~~

~~04. **Dividends and Other Intangible Income.** Dividends and other intangible income shall be included in income subject to apportionment to the extent they constitute business income received from companies not included in the combined report. However, a dividend deduction and factor adjustments are allowed to the extent dividends received are paid from prior year earnings previously included in income subject to apportionment. Part I, Subchapter C, Internal Revenue Code, is applied to determine the taxable year in which the earnings and profits were earned that paid the dividend. It is the taxpayer's responsibility to prove that the dividend, or a portion of it, was previously included in Idaho apportionable income. (3-20-97)~~

331. BUSINESS AND NONBUSINESS INCOME DEFINED -- BUSINESS INCOME (RULE 331).

Section 63-3027(a)(1), Idaho Code. ()

01. In General. Business income means income of any type or class and from any activity that meets the "transactional test" described in Rule 332 of these rules, or the "functional test" described in Rule 333 of these rules. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. ()

02. Terms Used in Definition of Business Income and in Application of Definition.
As used in the definition of business income and in the application of the definition, ()

a. "Trade or business" means the unitary business of the taxpayer, part of which is conducted within Idaho. ()

b. "To contribute materially" includes, without limitation, "to be used operationally in the taxpayer's trade or business." Whether property materially contributes is not determined by reference to the property's value or percentage of use. If an item of property materially contributes to the taxpayer's trade or business, the attributes, rights or components of that property are also operationally used in that business. However, property that is held for mere financial betterment is not operationally used in the taxpayer's trade or business. ()

332. BUSINESS AND NONBUSINESS INCOME DEFINED -- TRANSACTIONAL TEST (RULE 332).

Section 63-3027(a)(1), Idaho Code. ()

01. In General. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business. ()

02. Business Income for Idaho. If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Idaho, the resulting income of the transaction or activity is business income for Idaho. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in Idaho. ()

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03. Regular Course of the Taxpayer's Trade or Business. For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, such activities do not satisfy the transactional test. The transactional test includes, but is not limited to, income from sales of inventory, property held for sale to customers, and services that are commonly sold by the trade or business. The transactional test also includes, but is not limited to, income from the sale of property used in the production of business income of a kind that is sold or replaced with some regularity, even if replaced less frequently than once a year. ()

333. BUSINESS AND NONBUSINESS INCOME DEFINED -- FUNCTIONAL TEST (RULE 333).

Section 63-3027(a)(1), Idaho Code. ()

01. In General. Business income also includes income from tangible and intangible property, if the acquisition, management or disposition of the property constitutes an integral or necessary part of the taxpayer's regular trade or business operations. ()

02. Terms. ()

a. "Property" includes any interest in, control over, or use in property (whether the interest is held directly, beneficially, by contract, or otherwise) that materially contributes to the production of business income. ()

b. "Acquisition" refers to the act of obtaining an interest in property. ()

c. "Management" refers to the oversight, direction, or control (directly or by delegation) of the property for the use or benefit of the trade or business. ()

d. "Disposition" refers to the act, or the power, to relinquish or transfer an interest in or control over property to another, in whole or in part. ()

e. "Integral part" refers to property that constituted a part of the composite whole of the trade or business, each part of which gave value to every other part, in a manner that materially contributed to the production of business income. ()

03. Integral, Functional, or Operative Component of Trade or Business. Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient, if the property from which the income is derived is or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially contributed to the

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production of business income of the trade or business, part of which trade or business is or was conducted within Idaho. Depending on the facts and circumstances of each case, property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes has lost its character as a business asset and is not subject to the rule of the preceding sentence. Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed for sale.

()

04. Examples of Business Income Under the Functional Test. Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income, if the property is or was used in the taxpayer's trade or business operations. Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes business income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

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05. Operational Function Versus Investment Function. Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function as is the case where the holding of the property is limited to mere financial betterment of the taxpayer in general.

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06. Property Held in Furtherance of Trade or Business. If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, then income from that property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in Idaho.

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07. Presumptions. If with respect to an item of property a taxpayer takes a deduction from business income that is apportioned to Idaho or includes the original cost in the property factor, it is presumed that the item or property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of these actions.

()

08. Application of the Functional Test. Application of the functional test is generally unaffected by the form of the property (for example, tangible or intangible property, real or personal property). Income arising from an intangible interest, for example, corporate stock or other intangible interest in a business or a group of assets, is business income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component to the taxpayer's trade or business operations. Thus, while apportionment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, i.e., the same unitary business, establishment of such a relationship is

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not the exclusive basis for concluding that the income is subject to apportionment. It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an operational rather than an investment function of mere financial betterment. ()

334. BUSINESS AND NONBUSINESS INCOME DEFINED -- RELATIONSHIP OF TRANSACTIONAL AND FUNCTIONAL TESTS TO U.S. CONSTITUTION (RULE 334).

Section 63-3027(a)(1), Idaho Code. The Due Process Clause and the Commerce Clause of the U.S. Constitution restrict states from apportioning income as business income that has no rational relationship with the taxing state. The protection against extraterritorial state taxation afforded by these Clauses is often described as the “unitary business principle.” The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted at least in part in Idaho. The unitary business that is conducted in Idaho includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person or persons. Satisfaction of either the transactional test or the functional test complies with the unitary business principle, because each test requires that the transaction or activity (in the case of the transactional test) or the property (in the case of the functional test) to be tied to the same trade or business that is being conducted within Idaho. Determination of the scope of the unitary business being conducted in Idaho is without regard to the extent to which Idaho requires or permits combined reporting. ()

~~331.—334. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

336. BUSINESS AND NONBUSINESS INCOME -- APPLICATION OF DEFINITIONS (RULE 336).

01. In General. The following applies the foregoing principles for purposes of determining whether particular income is business or nonbusiness income. ()

02. Rent From Real and Tangible Personal Property. Rental income from real and tangible property is business income if the property for which the rental income was received is or was used in the taxpayer’s trade or business and, therefore, is includable in the property factor under Rule 465 of these rules. ()

03. Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real property or of tangible or intangible personal property is business income if the property while owned by the taxpayer was used in, or was otherwise included in the property factor of the taxpayer’s trade or business. However, if the property was used to produce nonbusiness income, the gain or loss is nonbusiness income. ()

04. Interest Income. Interest income from an intangible is business income if the intangible arises out of or was created in the regular course of the taxpayer’s trade or business operations or if the purpose for acquiring and holding the intangible is an integral, functional, or operative component of the taxpayer’s trade or business operations, or otherwise materially

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contributes to the production of business income of the trade or business operations. ()

05. Dividends. Dividends from stock are business income if the stock arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations. ()

06. Patent and Copyright Royalties. Royalties from patents and copyrights are business income if the patent or copyright arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the patent or copyright is an integral, functional, operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations. ()

3367. -- 339. (RESERVED).

340. ~~SINGLE TRADE OR BUSINESS OF A CORPORATION OR AN AFFILIATED GROUP OF CORPORATIONS -- APPLICATION OF DEFINITIONS PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- UNITARY BUSINESS PRINCIPLE (RULE 340).~~

Section 63-3027, Idaho Code.

(3-20-97)

01. ~~Apportionment.~~ ~~All income of a trade or business shall be reported and apportioned even though only one (1), or less than all, of the corporation's business divisions or unitary group's affiliates operated in Idaho during the taxable year. The apportionment formula cannot be computed separately for each division, department, or affiliate of a single trade or business.~~ **The Concept of a Unitary Business.** (3-20-97)()

a. A unitary business is a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in Idaho that comes from being part of a unitary business conducted both within and without Idaho is what provides the constitutional due process "definite link and minimum connection" necessary for Idaho to apportion business income of the unitary business, even if that income arises in part from activities conducted outside Idaho. The business income of the unitary business is then apportioned to Idaho using an apportionment percentage provided by Section 63-3027, Idaho Code. ()

b. This sharing or exchange of value may also be described as requiring that the operation of one (1) part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one (1) business either contributes to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business. ()

02. ~~Single Trade or Business.~~ ~~The determination of whether the activities of a~~

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~~corporation or an affiliated group constitute a single trade or business or more than one (1) trade or business is based on the facts in each case. The activities of a corporation or affiliated group are considered a single business if evidence indicates that the segments being considered are integrated with, depend on, or contribute to each other and the operations of the corporation or affiliated group as a whole. The following factors indicate a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the corporation or affiliated group constitute a single trade or business:~~ **Constitutional Requirement for a Unitary Business.** (7-1-98)()

a. ~~Same Type of Business. A corporation or affiliated group is generally engaged in a single trade or business if all its activities are in the same general line. For example, a taxpayer operating a chain of retail grocery stores is almost always engaged in a single trade or business. The sharing or exchange of value described in Subsection 340.01 of this rule that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business.~~ (3-20-97)()

b. ~~Steps in a Vertical Process. A corporation or affiliated group is almost always engaged in a single trade or business if its various divisions or affiliates are engaged in different steps in a large, vertically structured enterprise. For example, a taxpayer that explores for and mines copper ores and fabricates the refined copper into consumer products is engaged in a single trade or business, regardless of the fact that the various steps in the process are operated substantially independent of each other with only general supervision from the enterprise's executive offices. In Idaho, the unitary business principle shall be applied to the fullest extent allowed by the U.S. Constitution. The unitary business principle shall not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of such activities or entities would not be allowed by the U.S. Constitution.~~ (3-20-97)()

c. ~~Strong Centralized Management. A corporation or affiliated group is considered one (1) trade or business if there is a strong central management, coupled with the existence of centralized departments for functions such as financing, advertising, research, or purchasing. For example, a corporation or affiliated group is considered one trade or business if the central executive officers are normally involved in the operations of the divisions or affiliates and centralized offices perform the normal matters for the divisions or affiliates that a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing.~~ (3-20-97)

03. ~~More Than One Trade or Business. A taxpayer may have more than one (1) trade or business. In this case the taxpayer shall determine the business income attributable to each separate trade or business. The income of each business is apportioned taking into consideration the in-state and outstate factors that relate to that trade or business.~~ **Separate Trades or Businesses Conducted Within a Single Entity.** A single entity may have more than one (1) unitary business. In such cases it is necessary to determine the business, or apportionable, income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a formula that takes into consideration the in-state and the out-of-state factors that relate to the respective unitary business whose income is being apportioned. (3-20-97)()

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04. Unitary ~~Relationship~~ Business Unaffected by Formal Business Organization.
~~The existence of a~~ A unitary business may exist within a single business entity or among a commonly controlled group of business entities. The relationship shall be determined by reference to the relationship that exists between all related and affiliated corporations, not just those corporations whose income and apportionment factors are required to be considered. For example, the relationship with foreign affiliates shall be considered even though a water's edge election is made. A related corporation may include insurance companies and fifty percent (50%) or less owned corporations. The scope of what is included in a commonly controlled group of business entities is set forth in Rule 344 of these rules. (7-1-98)()

341. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- DETERMINATION OF A UNITARY BUSINESS (RULE 341).

Section 63-3027, Idaho Code. A unitary business is characterized by significant flows of value evidenced by factors such as those described in Mobil Oil Corp. v. Vermont, 445 U.S. 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one (1) or more of the factors mentioned above. ()

342. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- DESCRIPTION AND ILLUSTRATION OF FUNCTIONAL INTEGRATION, CENTRALIZATION OF MANAGEMENT AND ECONOMIES OF SCALE (RULE 342).

Section 63-3027, Idaho Code. ()

01. Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance. ()

a. Sales, exchanges, or transfers (collectively "sales") of products, services, or intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to effect the intercompany sales, because such sales can represent an assured market for the seller or an assured source of supply for the purchaser. ()

b. Common Marketing. The sharing of common marketing features among business

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entities is an indication of functional integration when such marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. (Such activity, however, is relevant to determining the existence of economies of scale and centralization of management.) ()

c. Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional integration when the matter transferred is significant to the businesses' operations. ()

d. Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration. ()

e. Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings or where products, services, or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration. ()

f. Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one (1) or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending which serves an investment purpose of the lender does not necessarily provide evidence of functional integration. (See Subsection 342.02 of this rule for discussion of centralization of management.) ()

02. Centralization of Management. Centralization of management exists when directors, officers, or other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one (1) subsidiary entity to another, from one (1) division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role can be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management. ()

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a. Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management many exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors. ()

b. Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one (1) or more significant operating aspects of one (1) business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight. ()

03. Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that can support the finding of economies of scale. The order of the list does not establish a hierarchy of importance. ()

a. Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale. ()

b. Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market, provides evidence of economies of scale. ()

343. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- INDICATORS OF A UNITARY BUSINESS (RULE 343).
Section 63-3027, Idaho Code. ()

01. Same Type of Business. Business activities that are in the same general line of business generally constitute a single unitary business, for example, a multistate grocery chain. ()

02. Steps in a Vertical Process. Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a

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business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices. ()

03. Strong Centralized Management. Business activities that might otherwise be considered as part of more than one (1) unitary business may constitute one (1) unitary business when there is a strong centralized management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Strong centralized management exists when a central manager or group of managers makes substantially all of the operational decisions of the business. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one (1) unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices that perform for the business activities the normal matters that a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing. ()

344. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- COMMONLY CONTROLLED GROUP OF BUSINESS ENTITIES (RULE 344).

Section 63-3027, Idaho Code. ()

01. In General. Separate corporations can be a part of a unitary business only if they are members of a commonly controlled group. ()

02. Commonly Controlled Group. A “commonly controlled group” means any of the following: ()

a. A parent corporation and any one (1) or more corporations or chains of corporations, connected through stock ownership (or constructive ownership) with the parent, but only if: ()

i. The parent owns stock possessing more than fifty percent (50%) of the voting power of a least one (1) corporation, and, if applicable, ()

ii. Stock cumulatively possessing more than fifty percent (50%) of the voting power of each of the corporations, except the parent, is owned by the parent, one (1) or more corporations described in Subparagraph 344.02.a.i., of this rule, or one (1) or more other corporations that satisfy the conditions of this subparagraph. ()

b. Any two (2) or more corporations, if stock, possessing more than fifty percent (50%) of the voting power of the corporations is owned, or constructively owned, by the same person. ()

c. Any two (2) or more corporations that constitute stapled entities. ()

i. For purposes of this paragraph, “stapled entities” means any group of two (2) or

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more corporations if more than fifty percent (50%) of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests. ()

ii. Two (2) or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of one (1) of the interests the other interest or interests are also transferred or required to be transferred. ()

d. Any two (2) or more corporations, if stock possessing more than fifty percent (50%) of the voting power of the corporations is cumulatively owned (without regard to the constructive ownership rules of Paragraph 344.05.a., of this rule) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, the individual's spouse, parents, brothers, sisters, grandparents, children and grandchildren, and their respective spouses. ()

03. Elections and Terminations. ()

a. If, in the application of Subsection 344.02 of this rule, a corporation is a member of more than one (1) commonly controlled group of corporations, the corporation shall elect to be treated as a member of only the commonly controlled group (or part thereof) with respect to which it has a unitary business relationship. If the corporation has a unitary business relationship with more than one (1) of those groups, it shall elect to be treated as a member of only one (1) of the commonly controlled groups with respect to which it has a unitary business relationship. This election shall remain in effect until the unitary business relationship between the corporation and the rest of the members of its elected commonly controlled group is discontinued, or unless revoked with the approval of the State Tax Commission. ()

b. Membership in a commonly controlled group shall be treated as terminated in any year, or fraction thereof, in which the conditions of Subsection 344.02 of this rule are not met, except as follows: ()

i. When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group shall not be terminated, if the requirements of Subsection 344.02 of this rule are again met immediately after the sale, exchange, or disposition. ()

ii. The State Tax Commission may treat the commonly controlled group as remaining in place if the conditions of Subsection 344.02 of this rule are again met within a period not to exceed two (2) years. ()

04. Controlled. A taxpayer may exclude some or all corporations included in a "commonly controlled group" by reason of Paragraph 344.02.d., of this rule by showing that those members of the group are not controlled directly or indirectly by the same interest, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subsection, the term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. ()

05. Stock Ownership. Except as otherwise provided, stock is "owned" when title to the stock is directly held or if the stock is constructively owned. ()

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- a.** An individual constructively owns stock that is owned by any of the following: ()
- i.** The individual's spouse. ()
- ii.** Children, including adopted children, of that individual or the individual's spouse, who have not attained the age of twenty-one (21) years. ()
- iii.** An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse or children. ()
- b.** Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than fifty percent (50%) of the voting power of the corporation. ()
- c.** In the application of Paragraph 344.02.d., of this rule, (dealing with stock possessing voting power held by members of the same family), if more than fifty percent (50%) of the stock possessing voting power of a corporation is, in the aggregate, owned by or for the benefit of members of the same family, stock owned by that corporation shall be treated as constructively owned by members of that family in the same ratio as the proportion of their respective ownership of stock possessing voting power in that corporation to all of such stock of that corporation. ()
- d.** Except as otherwise provided, stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner's capital interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner. ()
- e.** In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership. ()
- f.** In the application of Paragraph 344.02.d., of this rule (dealing with stock possessing voting power held by members of the same family), stock held by a limited partnership is constructively owned by a limited partner to the extent of the limited partner's capital interest in the limited partnership. ()
- 06. Terms.** For purposes of the definition of a commonly controlled group, each of the following shall apply: ()
- a.** "Corporation" means a corporation as defined in Section 63-3006, Idaho Code. ()
- b.** "Person" means a person as defined in Section 63-3005, Idaho Code. ()

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c. “Voting power” means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation. ()

d. “More than fifty percent (50%) of the voting power” means voting power sufficient to elect a majority of the membership of the board of directors of the corporation. ()

e. “Stock possessing voting power” includes stock where ownership is retained but the actual voting power is transferred in either of the following manners: ()

i. For one (1) year or less. ()

ii. By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor. ()

f. In the case of an entity treated as a corporation under Paragraph 344.06.a., of this rule, “stock possessing voting power” refers to an instrument, contract, or similar document demonstrating an ownership interest in that entity that confers power in the owner to cast a vote in the selection of the management of that entity. ()

341.—344. (RESERVED).

~~345. BUSINESS AND NONBUSINESS INCOME — APPLICATION OF DEFINITIONS~~ **~~(RULE 345).~~**

~~Section 63-3027, Idaho Code.~~

~~(3-20-97)~~

~~**01. In General.** This rule is used to determine whether income is business or nonbusiness income. Income, such as dividends, interest, rents, royalties, service and administrative charges, received from subsidiary or affiliated corporations not included in a combined filing, is business income. The examples in this rule are illustrative only and do not cover all pertinent facts.~~

~~(3-20-97)~~

~~**02. Rental Income.** Rental income from real and tangible property is business income if the property for which the rental income was received is used in the taxpayer's trade or business or is incidental to it.~~

~~(3-20-97)~~

~~**03. Examples of Rental Income.**~~

~~(3-20-97)~~

~~**a.** A taxpayer operates a multistate car rental business. The income from car rentals is business income.~~

~~(3-20-97)~~

~~**b.** A taxpayer is engaged in the construction business in which it uses equipment such as cranes, tractors, and earth moving vehicles. The taxpayer makes short term leases of equipment when the equipment is not needed on any particular project. The rental income is business income.~~

~~(3-20-97)~~

~~**c.** A taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five (5) story office building for use in connection with its trade or business. It uses~~

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~~the street floor as one (1) of its retail stores and the second and third floors for its corporate headquarters. The remaining two (2) floors are leased to others. The rental of the two (2) floors is incidental to the operation of the taxpayer's trade or business. The rental income is business income.~~ (3-20-97)

~~d. A taxpayer constructed a plant for use in its multistate manufacturing business and twenty (20) years later the plant was closed and offered for sale. The plant was rented temporarily from the time it was closed by the taxpayer until it was sold eighteen (18) months later. The rental income is business income and the gain on the sale of the plant is business income.~~ (3-20-97)

~~04. **Gains or Losses From Sale of Assets.** Gain or loss from the sale, exchange or other disposition of real and tangible or intangible personal property is business income if the property, while owned by the taxpayer, was used in the taxpayer's trade or business. However, if the property was used to produce nonbusiness income, the gain or loss is nonbusiness income.~~ (3-20-97)

~~05. **Examples of Gains or Losses.**~~ (3-20-97)

~~a. In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from the sales are business income.~~ (3-20-97)

~~b. A taxpayer constructed a plant for use in its multistate manufacturing business. Twenty (20) years later the property was sold at a gain while the taxpayer was using it. The gain is business income.~~ (3-20-97)

~~c. Assume the same facts as in Subsection 345.05.b., except that the plant was closed and offered for sale. The plant was sold eighteen (18) months later. The gain is business income.~~ (3-20-97)

~~d. Assume the same facts as in Subsection 345.05.b., except that the plant was rented while being held for sale. Both the rental income and the gain on the sale of the plant are business income.~~ (3-20-97)

~~06. **Interest Income.** Interest income from an intangible is business income if the intangible arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the intangible is related to or incidental to the trade or business operation.~~ (3-20-97)

~~07. **Examples of Interest Income.**~~ (3-20-97)

~~a. A taxpayer operates a multistate chain of department stores, selling for cash or credit. Service charges, interest, or time-price differentials and similar payments are received with respect to installment sales and revolving charge accounts. These amounts are business income.~~ (3-20-97)

~~b. A taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a federal income tax refund and collects a judgment against a debtor of the~~

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~~business. Both the tax refund and the judgment earned interest. The interest income is business income.~~ (3-20-97)

~~c. A taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer has special accounts to cover items such as worker's compensation claims, rain and storm damage, machinery replacement, etc. The money in those accounts is invested. Also, the taxpayer temporarily invests funds intended to pay federal, state, and local tax obligations. The interest income is business income.~~ (3-20-97)

~~d. A taxpayer is engaged in a multistate money order and traveler's checks business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is business income.~~ (3-20-97)

~~e. A taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital and extra cash totaling two hundred thousand dollars (\$200,000) which it regularly invests in short term, interest bearing securities. The interest income is business income.~~ (3-20-97)

~~08. **Dividends.** Dividends from stock are business income if the stock arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is related to or incidental to the trade or business operations.~~ (3-20-97)

~~09. **Examples of Dividends.**~~ (3-20-97)

~~a. A taxpayer operates a multistate chain of stock brokerage houses. During the year the taxpayer receives dividends on stock it owns. The dividends are business income.~~ (3-20-97)

~~b. A taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business the taxpayer has special accounts to cover items such as worker's compensation claims, etc. A part of the money in those accounts is invested in interest bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and dividends are business income.~~ (3-20-97)

~~c. A taxpayer and several unrelated corporations own all the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock to obtain a source of supply of materials used in its manufacturing business. The dividends are business income.~~ (3-20-97)

~~d. A taxpayer is engaged in a multistate construction business. Much of its construction work is performed for various federal and state governmental agencies. According to state and federal laws that apply to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets, cash and marketable securities, to current liabilities. To maintain an adequate bonding capacity, the taxpayer holds various stocks and interest bearing securities. Both the interest income and dividends received are business income.~~ (3-20-97)

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~~e. A taxpayer receives dividends from the stock of its subsidiary or affiliate that acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income. (3-20-97)~~

~~10. **Patent and Copyright Royalties.** Royalties from patents and copyrights are business income if the patent or copyright arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the patent or copyright is related to or incidental to the trade or business operations. (3-20-97)~~

~~11. **Examples of Patent and Copyright Royalties.** (3-20-97)~~

~~a. A taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on some of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties are business income. (3-20-97)~~

~~b. A taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. These acquired copyrights are used later by the taxpayer in its business. Royalties received on these copyrights are business income. (3-20-97)~~

(BREAK IN CONTINUITY OF SECTIONS)

365. USE OF THE COMBINED REPORT (RULE 365).

Section 63-3027, Idaho Code.

(3-20-97)

01. In General. Use of the combined report does not disregard the separate corporate identities of the members of the unitary group. The combined report is simply the computation, by the formula apportionment method, of the unitary business income reportable to Idaho by the separate corporate members of the unitary group. For purposes of this rule, included corporation means a corporation required to file an Idaho income tax return as a result of its own activities in Idaho and using a combined report. (3-20-97)

02. Separate Computations. Each included corporation shall: (3-20-97)

a. Be responsible for computing and paying its tax including any minimum tax due pursuant to Sections 63-3025 and 63-3025A, Idaho Code, as determined by the combined report. (3-20-97)

b. Separately compute Idaho tax credits and limitations, except the investment tax credit, which is applied pursuant to Section 63-3029B, Idaho Code, and Rules 710 through 717 of these rules. (3-20-97)

c. Separately determine and pay the permanent building fund tax required by Section 63-3082, Idaho Code. (3-20-97)

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03. Net Operating Loss. The Idaho net operating loss carryover or carryback for each included corporation is limited to its share of the combined net operating loss apportioned to Idaho for each taxable year. See Rule 200 of these rules. (3-20-97)

04. Nexus. Each corporation shall determine whether it has nexus in Idaho based on its activities or those conducted on its behalf. (3-20-97)

05. Throwback Sales. When a corporation's activities conducted in a state are within the protection of Public Law 86-272, the principle established in Appeal of Joyce, Inc., California State Board of Equalization, November 23, 1966, commonly known as the Joyce Rule, shall apply. Therefore, only the activities conducted by or on behalf of the corporation shall be considered for this purpose. (3-20-97)

06. Filing Returns. Each included corporation may file a separate return reporting its share of the combined net income or loss of the unitary group. In the alternative, the unitary group may elect to file a group return for all the included corporations. This election is allowed as a convenience to the taxpayer. Its use does not preclude the need for the separate recognition and computational requirements in this rule. (3-20-97)

07. Dividends and Other Intangible Income. Dividends and other intangible income shall be included in income subject to apportionment to the extent they constitute business income received from companies not included in the combined report. However, a dividend deduction and factor adjustments are allowed to the extent dividends received are paid from prior year earnings previously included in income subject to apportionment. Part I, Subchapter C, Internal Revenue Code, is applied to determine the taxable year in which the earnings and profits were earned that paid the dividend. It is the taxpayer's responsibility to prove that the dividend, or a portion of it, was previously included in Idaho apportionable income. ()

(BREAK IN CONTINUITY OF SECTIONS)

485. PROPERTY FACTOR -- VALUATION OF RENTED PROPERTY (RULE 485).
Section 63-3027(l), Idaho Code. (3-20-97)

01. In General. Property rented by the taxpayer is valued at eight (8) times its net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants. Subrents are not deducted if they constitute business income because the property that produces the subrents is used in the regular course of the taxpayer's trade or business when it is producing the income. Accordingly, there is no reduction in its value. See Rules 560 and 565 of these rules for special rules when using the net annual rental rate produces a negative or clearly inaccurate value or when the taxpayer uses property at no charge or rents it at a nominal rental rate. ~~(3-20-97)~~()

02. Examples of Subrents. (3-20-97)

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a. A taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are business income, they are not deducted from rent paid by the taxpayer for the food market. (3-20-97)

b. A taxpayer rents a five (5) story office building primarily for use in its multistate business. It uses three (3) floors for its offices and subleases two (2) floors to various other businesses. ~~The rental of the two (2) floors is incidental on a short-term basis because it anticipates it will need those two (2) floors for future expansion of its multistate business. The rental of all five (5) floors is integral to the operation of the taxpayer's trade or business.~~ Since the subrents are business income, they are not deducted from the rent paid by the taxpayer. (3-20-97)()

03. Annual Rental Rate. Annual rental rate is the amount paid as rent for property for a twelve (12) month period. If property is rented for less than a twelve (12) month period, the rent paid for the rental period constitutes the annual rental rate for the taxable year. However, if a taxpayer has rented property for a period of twelve (12) months or more and the current taxable year covers a period of less than twelve (12) months, the rent paid for the short taxable year shall be annualized. If the rental period is for less than twelve (12) months, the rent may not be annualized beyond its rental period. If the rental period is on a month-to-month basis, the rent may not be annualized. (3-20-97)()

04. Examples of Annual Rental Rate. (3-20-97)

a. Taxpayer A, which ordinarily files its returns based on a calendar year, is merged into Taxpayer B on April 30. The net rent paid pursuant to a lease with five (5) years remaining is two thousand five hundred dollars (\$2,500) a month. The rent for the short taxable year January 1 to April 30 is ten thousand dollars (\$10,000). After the rent is annualized the net rent is thirty thousand dollars (\$30,000) or (\$2,500 x 12). (3-20-97)

b. Assume the same facts as in ~~Subsection Paragraph~~ 485.04.a., of this rule except the lease would have terminated on August 31. In this example, the annualized net rent is twenty thousand dollars (\$20,000) or (\$2,500 x 8). (3-20-97)()

05. Annual Rent. Annual rent is the sum of money or other consideration payable, directly or indirectly, by the taxpayer or for the taxpayer's benefit for the use of the property and includes: (3-20-97)

a. Any amount payable for the use of real or tangible personal property whether the amount is a fixed sum of money or a percentage of sales, profits, or otherwise. (3-20-97)

b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges not separately stated, the amount of the rent shall be determined by considering the relative values of the rent and the other items. (3-20-97)

06. Examples of Annual Rent. (3-20-97)

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a. Pursuant to the terms of a lease, a taxpayer pays a lessor one thousand dollars (\$1,000) per month as a base rental and at the end of the year pays the lessor one percent (1%) of its gross sales of four hundred thousand dollars (\$400,000). The annual rent is sixteen thousand dollars (\$16,000) or $(\$12,000 + (1\% \times \$400,000))$. (3-20-97)

b. Pursuant to the terms of a lease, a taxpayer pays a lessor twelve thousand dollars (\$12,000) a year for rent, plus taxes of two thousand dollars (\$2,000) and mortgage interest of one thousand dollars (\$1,000). The annual rent is fifteen thousand dollars (\$15,000). (3-20-97)

c. A taxpayer stores part of its inventory in a public warehouse. The total charge for the year is one thousand dollars (\$1,000), of which seven hundred dollars (\$700) is for storage space and three hundred dollars (\$300) is for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is seven hundred dollars (\$700). (3-20-97)

07. Exclusions. Annual rent does not include any of the following: (3-20-97)

a. Incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc. (3-20-97)

b. Royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from the property, whether designated as a royalty, advance royalty, rental, or otherwise. (3-20-97)

08. Leasehold Improvements. Leasehold improvements shall be treated as property owned by the lessee regardless of whether the lessee is entitled to remove the improvements or they revert to the lessor when the lease expires. The original cost of leasehold improvements shall be included in the lessee's factor. (3-20-97)

09. Safe Harbor Lease. Property subject to a safe harbor lease shall be reported in the factor of the actual user of the property at original acquisition cost. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

600. ENTITIES INCLUDED IN A COMBINED REPORT (RULE 600).

Section 63-3027(t), Idaho Code. (3-20-97)

~~**01. Common Ownership.** For purposes of determining whether a corporation is an affiliate, common ownership may be established either by the taxpayer owning more than fifty percent (50%) of the voting stock of another corporation or having more than fifty percent (50%) of its voting stock owned by another entity. Common ownership is also established when another entity or individual owns more than fifty percent (50%) of the voting stock of two (2) or more entities. Ownership is determined on both a direct and indirect basis. It is not necessary that more than fifty percent (50%) of the voting stock of an entity be owned by another entity. It is sufficient~~

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~~if more than fifty percent (50%) of the voting stock of an entity is owned by a commonly controlled group of entities. However, common ownership is not established through a fifty percent (50%) or less owned entity's ownership of the stock of other entities.~~ (7-1-98)

~~**a.** Example. Corporation A owns sixty percent (60%) of Corporation B's voting stock and thirty percent (30%) of Corporation C's voting stock. Corporation B owns thirty percent (30%) of Corporation C's voting stock. Corporations A, B and C are affiliated.~~ (7-1-98)

~~**b.** Example. Corporation A owns forty percent (40%) of Corporation B's voting stock and thirty percent (30%) of Corporation C's voting stock. Corporation B owns sixty percent (60%) of Corporation C's voting stock. Corporation A is not affiliated with B or C, however, B and C are affiliated corporations.~~ (7-1-98)

021. Combined Report. Each corporation that is a member of a unitary business transacting business within and without Idaho shall allocate and apportion its income to Idaho using a combined report pursuant to Rules 360 through 369 of these rules. See Rules 340 through 344 of these rules for the principles for determining the existence of a unitary business. (3-20-97)()

032. Domestic International Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Domestic International Sales Corporation (DISC) pursuant to the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC is required. (7-1-98)

043. Foreign Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Foreign Sales Corporation (FSC) pursuant to the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. (7-1-98)

054. Intercompany Transactions. If a return is filed on a combined basis, the intercompany transactions shall be eliminated to the extent necessary to properly reflect combined income and to properly compute the apportionment factor. (3-20-97)

065. Insurance Companies. Pursuant to Section 41-405, Idaho Code, an insurance company subject to the premium tax may not be included in a combined group. (3-20-97)

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IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0401

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes between the text of the proposed rule and text of the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 6, 2004, Idaho Administrative Bulletin, Vol. 04-10, pages 531 through 544.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact James Husted, at (208) 334-7530.

DATED this 17th day of November, 2004.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and

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purpose of the proposed rulemaking:

Rule 027 - The provision on data processing agreements in Subsection 027.09 is outdated. The Commission is proposing that the subsection be struck.

Rule 033 - Sales tax rule 033 states that free distribution newspapers must devote 10% of the newspaper to “editorial content”. The statutory exemption for free distribution newspapers, Idaho Code Section 63-3622T, only requires “nonrevenue producing, informative content.” The rule, therefore, seems more restrictive than the statute. Also there is a separate rule for free distribution newspapers. The Rule is being amended to strike the subsection on free distribution newspapers.

Rule 084 - The container exemption, Idaho Code Section 63-3622E, Idaho Code, does not mention gift-wrapping. The Commission is proposing that the subsection on gift-wrapping be struck from the rule.

Rule 101 - The reference to "calendar year" in this rule is in conflict with Idaho Code Section 63-3622R.

Rule 102 - This rule contains an incorrect cross-reference to Section 63-3622H, Idaho Code. The cross-reference is being corrected to Idaho Code Section 63-3622HH.

Rule 105 - Section 63-3620, Idaho Code requires retailers to obtain seller’s permits from the Tax Commission. The Tax Commission is currently assigning variable filing cycles and “one-time only” filing requirements to different taxpayers. The rule is being amended to specifically provide for these filing cycles.

Rule 110 - The Tax Commission has made several administrative changes to Form 852 Idaho Sales Tax Return - County Assessors or Sheriffs. Sheriff's offices no longer report sales tax collected on this form. Also, the assessors are no longer required to file an amended return for tax collected at different rates. Finally, the Idaho Transportation Dept. also receives a \$1 per registration reimbursement pursuant to Idaho Code Section 63-3638. The rule is being amended to conform to these administrative changes.

Rule 117 - Section 63-3626, Idaho Code provides for refunds of sales tax paid in error. Rule 117 contains a confusing statement about taxes to be refunded to a retailer when tax was not collected by a retailer. The rule is being amended to strike the statement.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

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Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 25th day of August, 2004,

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).

01. Hardware and Computers Defined. (3-6-00)

a. Hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. (3-6-00)

b. Computers are programmable machines or devices having information processing capabilities and include word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (3-6-00)

02. Computer Software, Storage Media and Transfer Media Defined. (3-6-00)

a. Computer Software. Computer software, interchangeable with the terms program or software program, is a sequence of instructions or collections of data which, when incorporated into a machine readable data processing storage or communication medium or device, is capable of causing a computer to indicate, perform, or achieve a particular function, task, or result. Computer software includes upgrades, fixes and error corrections as well as any documentation or related information held on storage media or transferred by whatever means from any location. (3-6-00)

b. Storage and Transfer Media. Storage media includes, but are not limited to, hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, and semiconductor memory chips used for nonvolatile storage of information readable by a computer. Transfer media include, but are not limited to, the Internet, electronic bulletin boards, local and remote networks, and file transfer protocols. (3-6-00)

03. Hardware. The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules.

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(3-6-00)

04. Canned Software. The transfer of title, possession, or use for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis or is electronically transferred by whatever means, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program. (3-6-00)

a. Canned software may be transferred to a customer electronically or in storage media. Tax applies to the sale or lease of the canned software, including the charges for the storage media or the charge to effect an electronic transfer. (3-6-00)

b. Tax applies when operational control of canned software is transferred to the buyer, whether title to the storage media on which the software resides passes to the customer or the software resides on storage media furnished by the customer. A fee for the permanent or temporary transfer of possession of software by any means is a sale or lease of tangible personal property and is taxable. (3-6-00)

c. Tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. (3-6-00)

05. Maintenance Contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive periodic program enhancements and error correction, often referred to as upgrades, either on storage media or through remote telecommunications. The maintenance contract may also provide that the purchaser will be entitled to telephone or on-site support services. (3-6-00)

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software. (7-1-93)

b. If the maintenance contract is optional to the purchaser of canned software, then the portion of the contract fee representing upgrades or new software is subject to sales tax if the fees for support services and upgrades are separately stated. If the fees are not separately stated the entire charge for the maintenance contract is subject to sales tax. (3-6-00)

06. Reports Compiled by a Computer. The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable regardless of the means of transfer. If a report is compiled from information furnished by the same person to whom the finished report

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is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented. (3-6-00)

a. Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

b. Example: A company sells mailing lists which are stored on a computer disk. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (7-1-93)

c. Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

d. When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

e. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

07. Training Services. Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)

a. When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

b. When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

c. When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax. (3-6-00)

08. Custom Software. The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are

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represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

a. Tax does not apply to the sale, license, or lease of custom software regardless of the form or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (3-6-00)

b. If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale. (7-1-93)

c. Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software. (7-1-93)

~~009. **Data Processing Service Agreement.** Data processing includes contractual agreements to access computer equipment owned and operated by another, either by batch or on-line, for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment. A charge for computer time under the terms of a data processing service agreement is a service and not subject to sales tax. Computer hardware sold, leased, or rented in connection with a data processing service agreement must be separately stated and taxed as provided in Subsection 027.03.~~ (3-6-00)

~~409.~~ **Purchases for Resale.** Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

(BREAK IN CONTINUITY OF SECTIONS)

033. SALES OF NEWSPAPERS AND MAGAZINES (RULE 033).

01. **Subscriptions.** Subscriptions to newspapers and magazines are sales of tangible personal property. The sale will be taxed if the single copy price of each newspaper or magazine purchased by the subscriber exceeds eleven cents (\$0.11). The single copy price shall be computed on an annual basis regardless of whether the subscription is paid weekly, monthly or on some other periodic basis. (7-1-93)

02. **Single Copy Price.** The single copy price shall be computed according to the following formula. (Published subscription price) x (Number of subscription periods in one (1) year) / (Number of issues a subscriber receives in one (1) year) = Single Copy Price. If the single

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copy price as computed exceeds eleven (\$0.11)cents, the subscription is taxable. If the single copy price is eleven cents (\$0.11) or less, the subscription price is not taxable. (7-1-93)

03. Computation of Tax. If the subscription price is taxable, the tax shall be computed on the subscription price according to the schedule contained in Section 63-3619, Idaho Code. (7-1-93)

04. Subscription Price. As used in this rule, the terms published subscription price and subscription price mean the total amount charged for purchase and delivery of the newspaper and magazine, except that separately stated postage shall be excluded from the subscription price subject to tax. It is acceptable business practice for publishers to establish a price for their newspapers as separate weekday-only and Sunday-only issues. The provisions of this rule will be in effect in such cases. When the price is posted as a combined weekday-Sunday price, sales tax will be charged on the combined subscription price. (7-1-99)

05. Individual Sales. Individual or separate sales of newspapers or magazines, except as provided in Subsection 033.06 of this rule for a single price of eleven cents (\$0.11) or less are not taxable. Individual or separate sales of newspapers or magazines for a single price exceeding eleven cents (\$0.11) are subject to tax according to the schedule provided in Section 63-3619, Idaho Code. Separate or individual sales of newspapers or magazines together with retail sales or other tangible personal property subject to tax shall be taxable if the total sales price of all taxable property included in the sale exceeds eleven cents (\$0.11). (3-15-02)

06. Vending Machine Sales. Sales of newspapers or magazines through a vending machine are governed by the provisions of Section 63-3613, Idaho Code, and Rule 058 of these rules, except when the cost of the newspaper is greater than the sales price, tax will be computed on the retail sales price. (7-1-99)

07. Independent Retailer Sales. The sale of newspapers by a publisher to an independent retailer will be tax exempt only if the retailer provides the publisher with a properly executed resale certificate. See Rule 128 of these rules. The incidence of sales tax then falls upon the independent retailer who must have a registered seller's permit number and will be responsible for collecting, accounting for and remitting the sales tax on all newspapers thus purchased and resold. (3-15-02)

08. Carriers Less Than Sixteen Years Old. If the carrier is less than sixteen (16) years old, the publisher or other seller's permit holder from whom he or she obtains the newspapers will be responsible for the collection of sales tax and remitting such taxes to the State Tax Commission. (7-1-93)

09. Product Consumed by the Publisher. Eight-tenths of one percent (0.8%) of net press run of newspapers or magazines, will be taxed as product consumed by the publisher. Any percentage figure below eight-tenths of one percent (0.8%) must be supported by accepted accounting methods generally used in the publishing industry. The value of the newspapers used shall be set at the retail price charged the consumer. Example: (Eight tenths of one percent (0.8%) of Daily Net Press Run) x (Single Copy Retail Price) x (Tax Rate) / Daily Net Press Run = Tax Per Copy. (7-1-93)

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10. Single Unit Price and Net Press Run. For purposes of the computation in Subsection 033.09 of this rule single copy price shall be the amount computed by the formula in Subsection 033.02 of this rule. Net press run shall mean all readable, usable copies, including editorial copies, tearsheets, and archival copies, and not including spoiled runs or printing waste.
(7-1-93)

~~**11. Free Distribution Publications.** Those free distribution publications, such as shoppers or flyers which, because they achieve no retail value as defined in this rule and meet the exemption laws due to a ten percent (10%) editorial content, will not be subject to sales tax.~~
(7-1-93)

~~**121.**~~ **Cross-Reference.** (7-1-93)

a. See Rule 058 of these rules, Sales Through Vending Machines. (7-1-99)

b. See Rule 127 of these rules, Free Distribution Newspapers. ()

~~**bc.**~~ See Rule 128 of these rules, Certificates for Resale and Other Exemption Claims.
(3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

084. CONTAINERS RETURNABLE/NONRETURNABLE (RULE 084).

01. Container. A container encloses or will enclose tangible personal property which is sold at wholesale or retail. A container may be comprised of one (1) or more components. Items used as shipping supplies which do not enclose the product are not considered to be containers. Example: Cartons of canned goods are placed on a pallet. Shrink wrap is used to bind the cartons to the pallet. A shipping address label is affixed to the shrink wrap. The container includes the cans in which the goods are enclosed; the cartons in which the canned goods are placed; and the shrink wrap and pallet which enclose the cartons. The address label is not part of the container.
(7-1-93)()

02. Containers Exempt from Tax. The following containers are exempt from sales or use tax:
(7-1-93)

a. Nonreturnable containers purchased by a retailer or wholesaler who places the contents in the container and sells the contents with the container at retail or wholesale, including cans, barrels, boxes, cartons, grocery sacks, disposable soft drink cups and lids, and other to-go fast food containers; ~~and gift wrap and gift boxes, but only when the gift wrapping of merchandise is offered as a regular service to all purchasers of merchandise at no additional charge.~~
(7-1-98)()

b. Returnable containers when the container, along with the contents, is sold at retail if the fee for the container is separately stated, including returnable beer kegs, returnable barrels,

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and returnable pallets. (7-1-98)

c. Returnable containers when sold back to retailers or manufacturers for refilling. (7-1-93)

d. Returnable or nonreturnable containers when sold with contents that are exempted from the tax, regardless of whether or not the container is separately billed, including containers for prescription drugs, and oxygen or acetylene cylinders, when the use of the gases qualifies for the production exemption. (7-1-93)

03. Taxable Containers. Containers subject to sales and use tax include containers used by persons who are providing a service rather than selling a product, such as plastic clothing bags purchased by dry cleaners. (7-1-98)

04. Supplies. Shipping, selling, or distribution supplies are not considered to be containers and are subject to the tax when purchased by the shipper, seller, or distributor, such as: (7-1-93)

a. Shipping pallets and lumber stickers when not banded or shrink wrapped to the product to be sold, thereby not becoming a part of the container. (7-1-93)

~~b. Gift wrap and boxes when not regularly offered to all purchasers of merchandise or when a fee is charged for the service of gift wrapping. (7-1-93)~~

~~eb.~~ Banding or binders used to secure goods to transportation equipment. (7-1-93)

~~ec.~~ Price stickers and address labels affixed to containers that do not provide any product information such as weight, quantity, nutritional value, or other necessary product description. See *Idaho Sales Tax Administrative Rule 042* of these rules. (7-1-98)()

~~ed.~~ Example: Plywood is wrapped with lumber wrap. The bundles are rested on pallets for shipping. In this example the lumber wrap is the only container. As the bundles are not enclosed onto the pallet, the pallet is not a container and is instead a shipping supply subject to the tax. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

101. MOTOR VEHICLES AND TRAILERS USED IN INTERSTATE COMMERCE (RULE 101).

01. In General. An exemption is provided from the sales and use tax for motor vehicles and trailers sold or leased to commercial or private carriers to be substantially used in interstate commerce. The exemption is effective beginning April 1, 1989. Commercial or private carriers shall include the business of transportation of persons or commodities owned by the carrier or another, but shall not include farm vehicles or noncommercial vehicles as defined by

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Section 49-123, Idaho Code.

(7-1-93)

02. Motor Vehicles. An exemption is provided from the sales and use tax for motor vehicles sold or leased to a purchaser who will: (7-1-93)

a. Immediately register the vehicle with a maximum gross weight of over twenty-six thousand (26,000) pounds; ~~and~~ (7-1-93)()

b. Register the vehicle under the International Registration Plan, (IRP), or other similar proportional or pro rata registration plan; and (7-1-93)()

c. Operate the vehicle in a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any ~~calendar year~~ registration period under the international registration plan. (7-1-93)()

03. Trailers. An exemption is provided from the sales or use tax for trailers when the purchaser will: (7-1-93)

a. Immediately place the trailer in a fleet of vehicles registered under the International Registration Plan, (IRP), or other similar proportional or pro rata registration plan; and (7-1-93)()

b. The trailer will be part of a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any calendar year. (7-1-93)

04. Title or Base Plate. The exemption applies whether the motor vehicles and trailers are titled or base plated in Idaho or another state or nation. (7-1-93)

05. Documentation. Purchasers claiming this exemption must provide the seller or lessor with a properly completed Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle. When a vehicle qualifying for this exemption is purchased from a retailer who is not registered to collect Idaho sales tax, the Form ST-104-MV must be completed by the purchaser and provided to the county assessor or Department of Transportation when titling or registering the vehicle in Idaho. (7-1-93)

06. Repair Parts and Supplies. The exemption does not apply to parts, glider kits as defined by Section 49-123, Idaho Code, supplies, or other tangible personal property purchased by persons engaged in interstate commerce. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

102. LOGGING (RULE 102).

01. In General. The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in logging activities. The provisions of this rule are based

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on the usual methods of doing business in this industry. Specific factual differences in the way a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Since some equipment may be used for more than one (1) purpose, determinations of taxability will be made based upon the primary use of the equipment. (7-1-93)

02. Real Property. The logging exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased for the purpose of becoming an improvement or fixture to real property. See ~~ISTC~~ Rules 010 and 067 of these rules for a definition of real property. (7-1-93)()

03. Property Used in Logging Operations. The logging exemption applies to tangible personal property primarily used in a logging activity without regard to the primary business activity of the person performing the logging. For example, a contractor building a road for the Forest Service may claim the logging exemption when purchasing equipment and supplies primarily used to remove the timber from the right-of-way if the timber is resold, even though logging is not the contractor's primary activity. (7-1-93)

04. Logging Process Begins and Ends. The logging process begins when forest trees are first handled by the logger at the site where such an operation occurs. The logging process ends when the product is placed on transportation vehicles at the loading site, ready for shipment. (7-1-93)

05. Logging Exemption. Generally, the logging exemption includes equipment and supplies used or consumed in the logging process and which are necessary or essential to the performance of the operation. To qualify, the logging use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be directly used in the logging process. Examples include: (7-1-93)

- a.** Chain saws with a unit price of more than one hundred dollars (\$100) and tree harvesters. (7-1-93)
- b.** Skidders, tower-skidders, skidding cables, or chokers. (7-1-93)
- c.** Log loaders and log jammers which are not licensed motor equipment. (7-1-93)
- d.** Repair parts, lubricants, hydraulic oil, and coolants which become a component part of logging equipment. (7-1-93)
- e.** Fuel, such as diesel, gasoline, and propane consumed by equipment while performing exempt logging activities. (7-1-93)

06. Directly Used. Directly used, as applied to logging, means the performance of any of the following functions when such functions occur between the point at which the logging operation begins and the point at which the operation ends, as defined in Subsection 102.04 of this rule: (7-1-93)

- a.** The performance of a function in the logging process that effects a physical change in the property being logged so as to render the property more marketable. (7-1-93)

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b. The performance of a function which occurs simultaneously with and which is an integral part of and necessary to a function which effects a physical change in the property being logged rendering it more marketable. (7-1-93)

c. The performance of a function which is an integral and necessary step in a continuous series of functions which effect a physical change in the property being logged rendering it more marketable. (7-1-93)

d. The performance of a quality control function which is an integral and necessary step in maintaining specific product standards. Any portion of the quality control function that is related to research and development is excluded from this exemption. (7-1-93)

07. Not Included in Logging Exemption. Generally, the logging exemption does not include the following activities and equipment: (7-1-93)

a. Road construction equipment and supplies such as tractors, road graders, rollers, water trucks, whether licensed or unlicensed, explosives, gravel, fill material, dust suppression products, culverts, and bridge material. (7-1-93)

b. Slash disposal or brush piling and clearing equipment and supplies, such as brush clearing machines, brush rakes, and tractors, except when part of the operation of a tree farm. (7-1-93)

c. Reforestation equipment and supplies, except when part of the operation of a tree farm. (7-1-93)

d. Safety equipment and supplies, including hard hats and earplugs. (7-1-93)

e. Transportation equipment and supplies including vehicles to transport logs from the loading site to the mill, whether the vehicles are licensed or unlicensed, and cable and tie-downs used to fasten logs to the vehicle. (7-1-93)

f. Machinery, equipment, materials, repair parts, and supplies used in a manner that is incidental to logging such as: office equipment and supplies; selling and distribution equipment and supplies; janitorial equipment and supplies; maintenance equipment and supplies which do not become component parts of logging equipment, such as welders, welding gas, and shop equipment; and paint, plastic coatings, and all other similar products used to protect and maintain equipment, whether applied to logging equipment or other equipment. (7-1-93)

g. Research equipment and supplies all expenses for which the taxpayer claims the federal credit for incremental research expenses under Section 41(f) of the Internal Revenue Code. (7-1-93)

h. Hand tools with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tools may be to the logging operation or how directly they may be used. (7-1-93)

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i. Recreation-related vehicles, as defined in Section 63-3622HH, Idaho Code, regardless of use, such as All Terrain Vehicles, (ATV's), snowmobiles, and off-highway motorbikes. (7-1-93)()

j. Aircraft or motor vehicles licensed or required to be licensed by the laws of this state, regardless of the use to which such motor vehicles or aircraft are put. A motor vehicle not required to be licensed is exempt under the logging exemption only if it meets the tests established elsewhere in this rule. (7-1-93)

08. Election to Pay Sales Tax. ~~Effective April 6, 1988, if~~ The owner of a log loader, log jammer, or similar fixed load motor equipment used in logging, not normally licensed for use on public roads, may elect to license and pay sales tax on the motor equipment rather than placing it on the personal property tax rolls, if the motor equipment may be legally operated on a public road as a commercial vehicle. (7-1-93)()

a. Motor equipment licensed at the time of purchase. Sales tax applies to the total purchase price of the motor equipment. (7-1-93)

b. Motor equipment licensed after the date of purchase. Use tax applies to the fair market value of motor equipment on which no sales or use tax has been paid and which was not licensed at the time of purchase, if acquired within the last seven (7) years. See Section 63-3633, Idaho Code. Fair market value may be determined from the personal property tax records of the county assessor. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

105. TIME AND IMPOSITION OF TAX, RETURNS, PAYMENTS AND PARTIAL PAYMENTS (RULE 105).

01. Time and Imposition of Tax. (7-1-93)

a. Sales Tax. Sales tax is imposed, computed and collected at the time of sale, without regard to the provisions of any contract relating to the time or method of payment. In the case of installment sales, sales on account, or other credit sales, the seller shall report as a taxable sale the entire sales price for the month in which the sale is made. No part of the sales tax may be deferred until the time the retailer actually collects payment from the buyer. A sale occurs when title to property passes through delivery to the customer or absolute and unconditional appropriation to a contract. Lease or rental payments are taxable during the month or other period for which the property is leased or rented. (7-1-93)

b. Use Tax. Use tax is determined at the time of the use, storage or other consumption of tangible personal property in Idaho. The tax is reported and payable in accordance with the provisions of this rule. Persons making purchases subject to use tax should apply for a use tax permit number from the Tax Commission. Application forms may be obtained by contacting any Tax Commission office. (7-1-93)

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c. Taxable Sales Create State Revenue. The sales or use tax collected by a retailer from a customer at the time of purchase becomes state money at that time. The collected amounts may not be put to any use other than that allowed by Chapter 36, Title 63, Idaho Code, and these rules. (7-1-93)

02. Returns. (7-1-93)

a. Monthly Filing Generally Required. All retailers and persons subject to use tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all sales and use tax due from the first through the last day of the preceding calendar month. (7-1-93)

b. Request to File Quarterly or Semi-annually. Retailers or persons who owe six hundred dollars (\$600) or less per quarter and have established a satisfactory record of timely filing and payment of the tax may request permission to file quarterly or semi-annually instead of monthly. (~~3-20-04~~)()

c. Request to File Annually. Retailers or persons who have seasonal activities, such as Christmas tree sales or repeating fair booths, may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. (7-1-93)

d. Variable Filing. If the Tax Commission finds it necessary or convenient for the administration of the Sales Tax Act, it may assign an account to a taxpayer with a variable filing requirement. In such a case the taxpayer would not be required to file returns at regular intervals. The Tax Commission may also create one-time filing only accounts for taxpayers who are making a single payment of sales or use tax. ()

~~d.~~ Final Report. Whenever a taxpayer who is required to file returns under the Sales Tax Act or these rules stops doing business, he must mark cancel on the last return he files. This return ends the taxable year for sales or use tax purposes and constitutes the taxpayer's final report of sales or use tax activities or liabilities. The taxpayer must enclose his seller's permit with his request for cancellation or send a written statement that the permit has been destroyed. If the taxpayer continues business activity after filing a final report he may be subject to liabilities or penalties for failing to comply with the Idaho Sales Tax Act and these rules. (7-1-93)

03. Valid Return. A tax return or other document required to be filed in accordance with Section 63-3623, Idaho Code, and these rules must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return is considered to have filed no return. A taxpayer's failure to properly file in a timely manner may result in penalties imposed by Section 63-3634, Idaho Code, and related rules. (7-1-93)

a. The sales and use tax return form must be completed and, if required, copies of all pertinent supporting documentation must be attached. The results of required supporting

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documentation must be carried forward to applicable lines on the sales or use tax return form.

(7-1-93)

b. All sales and use tax returns or other documents filed by the taxpayer must include his sales or use tax permit number and federal taxpayer identification number in the spaces provided.

(7-1-93)

c. A sales or use tax return that does not provide sufficient information to compute a tax liability does not constitute a valid return.

(7-1-93)

d. Perfect accuracy is not required of a valid return, although each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; the tax liability must be calculated and have sufficient supporting information, if required, to demonstrate how the result was reached; and it must show an honest and genuine effort to satisfy the requirements of the law.

(7-1-93)

04. Perpetual Extensions of Time to File Revoked. Any previously granted permanent or perpetual extension of time to file any sales or use tax returns is hereby revoked. Any person who has used such an extension in the past may avoid a penalty for late filing by filing a timely extension of time return estimating the tax liability, as provided by Subsection 105.05 of this rule.

(7-1-93)

05. Use of Estimates Extension of Time Returns.

(7-1-93)

a. The Commission may, for good cause, grant authority for a taxpayer to file for an extension of time by filing an estimated return. When filing the Extension of Time estimated return, the taxpayer must attach a written request which sets forth the reason for estimating. The Commission will review each request to determine if there is good cause for filing an Extension of Time estimated return. If the Commission determines that the request should be denied, the taxpayer will be notified in writing and a penalty, as provided by Section 63-3046, Idaho Code, will apply to any delinquent tax due when the original return is filed.

(7-1-93)

b. If the return for any period is filed on an estimated basis, the estimated return must be filed timely and the estimate must be reconciled to actual figures by filing an original return within one (1) month of the due date. Any additional tax due as a result of reconciliation must be remitted when the original return is filed and must include interest on any unpaid balance due from the due date of the return.

~~(7-1-93)~~()

c. The estimated tax remitted must be at least ninety percent (90%) of the total sales and use tax due for the period or one hundred percent (100%) of the total sales and use tax due for the same month of the prior year. If the estimated tax paid is less than these requirements, a five percent (5%) penalty may be applied to the remaining tax due, as provided by Section 63-3046(a), Idaho Code.

(7-1-93)

d. Taxpayers wishing to file an Extension of Time estimated return must obtain the required forms from the Commission.

(7-1-93)

06. Forms Required.

(7-1-93)

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a. **Separate Payments.** The original return will be completed with the amount of total sales, nontaxable sales, taxable sales, items subject to use tax, and tax due inserted in the blanks. Payment must accompany the return. If the retailer owes payments for withholding or other taxes due to the state and payable to the Commission, separate checks should be made out for each tax payment and the reports and checks should be sent separately to the Commission. A complete sales and use tax return will be filed by each retailer or person subject to use tax. This return will be on a form prepared and mailed to the taxpayer by the Commission. If the original is lost or destroyed, a substitute form will be supplied upon request. (7-1-93)

b. **Retailers Must Report Own Use and Nontaxed Transactions.** All retailers must report any sales or purchases on which no sales or use tax was collected or paid. Goods sold or produced and consumed by the retailer, items withdrawn from stock for personal use or employee use, stock removed and used for gift or promotional purposes, or any combination of such uses are subject to tax. (7-1-93)

c. **Reporting Adjustments.** Any adjustments for additional tax due or credits claimed should be made on the next return due after the adjustments are discovered. These adjustments are to be shown on the line designated for adjustments on the return form and must be accompanied by an explanation and any documents that support the claimed adjustment. (7-1-93)

07. Payment of Tax. (7-1-93)

a. **Payment to Accompany Return.** The return filed in accordance with this rule must be accompanied by a remittance of the total amount due as shown on the return. Checks or other negotiable instruments should be made payable to the Idaho State Tax Commission. (7-1-93)

b. **Payment of One Hundred Thousand Dollars (\$100,000) or Greater.** All taxes due to the state must be paid by electronic funds transfer whenever the amount due is one hundred thousand dollars (\$100,000) or greater, in accordance with rules promulgated by the Idaho State Board of Examiners, which is incorporated by reference to these rules. (7-1-93)

c. **Remittance of Collections Required--Bracket Exception.** Retailers are required to remit all taxes collected from purchasers, except any difference that may result from use of the bracket system described in Rule 068 of these rules. Any taxes erroneously collected in excess of those properly due should be refunded to the purchaser by the retailer. If the retailer either cannot or does not make the refund during the period for which the return is due, then the retailer must report the erroneously collected taxes on the return and pay them to the Commission. If the erroneously collected taxes are subsequently refunded to the purchaser from whom they were collected, the retailer may claim a credit or refund of sales taxes in accordance with Rule 117 of these rules. Under no circumstances may a retailer retain any amount collected as sales or use tax which is greater than the retained amount authorized under the bracket system by Rule 068 of these rules. (3-20-04)

08. Filing Dates--General Rule. The filing date for all sales or use tax returns is the twentieth day of the calendar month immediately following the last day of the reporting period, unless otherwise allowed by these rules. This is the filing due date for all regular monthly, quarterly, semi-annual, and annual accounts. If the twentieth is a Saturday, Sunday, or legal

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holiday, the return shall be due on the next following day which is not a Saturday, Sunday or legal holiday. (3-20-04)(____)

(BREAK IN CONTINUITY OF SECTIONS)

110. RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS (RULE 110).

01. Filing Returns. Upon collection of sales tax on applications for certificate of title to a motor vehicle, trailer, or other titled property, or initial application for registration processed by the county assessor, the assessor shall, no less than monthly, complete and submit to the Commission, Form ST-852, Idaho Sales Tax Return-County Assessors ~~or Sheriffs, no less than monthly~~. The assessor may, at his discretion, submit the form more frequently. But at no time shall the amount of tax collected during any month be submitted later than the twentieth day of the month following the month in which the tax was collected. (7-1-93)(____)

~~**02. Separate Forms for Each Tax Rate.** It is possible for an assessor to collect tax at more than one (1) rate. This can happen when a person purchases a vehicle in a state with a lower tax rate and soon thereafter registers the vehicle in Idaho. A separate Form ST-852 must be prepared for each rate of tax collected.~~ (3-20-04)

032. Reimbursement. The assessor and the Idaho Transportation Department will be reimbursed at the rate of one dollar (\$1) for each application for certificate of title or initial registration of a motor vehicle, trailer, or other titled property, and each Form ST-108, Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, processed by the assessor except those upon which any sales or use tax due has been previously collected by a retailer or paid by the purchaser. (3-15-02)(____)

043. Financial Institutions. Financial institutions collecting tax on sales of tangible personal property ~~which~~ that they are financing, whether sold by the financial institution or another, must remit the tax to the Commission no later than the twentieth day of the month following the month in which the tax was collected from the purchaser of the tangible personal property. Failure to remit the tax on a timely basis will result in the addition of penalties and interest as provided by Sections 63-3632 and 63-3634, Idaho Code. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

117. REFUND CLAIMS (RULE 117).

01. In General. Application for refund of sales or use taxes paid in excess of those properly imposed by the Sales Tax Act, shall be in accordance with the provisions of this rule. (7-1-93)

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02. Payment of Sales Tax by a Purchaser to a Vendor. When a purchaser has paid sales tax to a vendor, and later determines that the sales tax was paid in error, the purchaser shall request the refund from the vendor to whom the excess tax was paid. If the purchaser can provide evidence that the vendor has refused to refund the tax, he may then file a claim for refund directly with the Tax Commission. (7-1-93)

03. Payment of Sales or Use Tax Directly to the State. When a person holding a seller's permit or use tax account number has paid tax to the state, and later determines that the sales or use tax was paid in error, he may file a claim for refund directly with the Tax Commission. (7-1-93)

04. Bad Debts. Claims for refunds arising from bad debts must be filed with the Tax Commission in the manner prescribed by Rule 063 of these rules. (5-3-03)

05. Mathematical Errors. When the filer of sales or use tax returns determines that a mathematical error has been made on a previously filed return resulting in overpayment of the proper amount of sales or use taxes, he may file a claim for refund directly with the Tax Commission. (7-1-93)

06. Claim Form. Form TCR, Sales Tax Refund Claim, may be used to file for a refund from the Commission. Although this form is available for this purpose, it is not required. A refund claim, however, must be in writing. The claim must include the full name and address of the claimant and his seller's permit number or use tax account number if the claimant has such a number. The claim must include a detailed statement of the reason the claimant believes a refund is due, including a description of the tangible personal property, if any, to which the tax relates and the date on which the claimed excess taxes were paid. If the claimant is the retailer, the claim for refund must include a statement, under oath, that the amount of tax plus interest refunded to the retailer have been or will be refunded by the retailer to the purchaser ~~or that such taxes have never been collected from the purchaser.~~ (5-3-03)()

07. Outstanding Liabilities. No claim for refund will be approved or issued if the claimant has outstanding liabilities for other taxes administered by the Tax Commission. (5-3-03)

08. Payment Under Protest. It is not necessary for a taxpayer to pay taxes under protest in order to subsequently be able to claim a refund of such taxes. (7-1-93)

09. Statute of Limitations. A claim for refund will not be allowed if it is filed more than three (3) years from the time the payment of the tax was made. The time the payment was made is the date upon which the sales or use tax return relating to the payment was filed with the State Tax Commission. (5-3-03)

10. Taxes Paid in Response to a Notice of Deficiency Determination. A claim for refund may not be filed relating to any sales or use taxes which have been asserted by a notice of deficiency determination. A taxpayer contending that taxes have been erroneously or illegally collected by the State Tax Commission in conformance with a notice of deficiency determination must seek a refund by using the appeal procedures outlined in Rule 121 of these rules. (5-3-03)

11. Denial of a Refund Claim. All claims for refund or credit will be reviewed by the

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State Tax Commission's staff. If the staff concludes that all or part of the claim should not be allowed, notice of denial of the claim shall be given to the claimant by return receipt requested delivery. The notice shall include a statement of the reasons for the denial. The notice of denial shall be the equivalent of a notice of deficiency determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must file a petition for redetermination in the manner prescribed in Rule 121 of these rules. A petition for redetermination must be filed no later than sixty-three (63) days from the date upon which the notice of denial is mailed to or served on the claimant. (5-3-03)

- 12. Interest on Refunds.** See Rule 122 of these rules. (5-3-03)

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IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0401

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes between the text of the proposed rule and text of the pending rule.

Pursuant to Section 67-5228, a minor clerical correction to the table in Subsection 988.11.c.ii. - Example B is being made. In the proposed rule under the column header of the second column "Year Placed in Service", the year was listed as 2003. This is being corrected to the year 2005. The correction is being made in this notice only and no text is being reprinted here.

The pending rule is being adopted as proposed with the exception of the minor correction shown above. The original text of the proposed rule was published in the October 6, 2004, Idaho Administrative Bulletin, Vol. 04-10, pages 547 through 573.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 17th day of November, 2004.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an

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agency, not later than October 20, 2004.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 006 is being updated to reference the appropriate editions of the guides used to determine the values of recreation vehicles and is being corrected and updated to reference the appropriate edition of the register used in the valuation of railroad equipment. To make technical corrections.

Rule 225 is being amended to correct the cross reference to the statute based on the change made by HB538.

Rule 304 is being amended to clarify that once a manufactured home has been declared real property, it remains real property until a reversal pursuant to Section 63-305, Idaho Code, has been completed. To make technical corrections.

Rule 317 is being amended to clarify what property is subject to the occupancy tax implementing HB649 and to provide direction to assessors on calculation of the homeowner's exemption.

Rule 404 is being amended to clarify that new electrical generation property is not to be apportioned over the wire miles throughout the county where located but to only be apportioned to the tax code area where the property is located as provided by HB542.

Rule 609 is being amended to implement HB516 relating to ownership issues for the homeowner's exemption by deleting subsections of the rule that are a duplication of the law.

Rule 613 is being amended to implement the new requirements in HB477 relating to procedures for determining crop prices and the capitalization rate to be used in the income approach to calculate the taxable value of agricultural use land. To make technical corrections.

Rule 803 is being amended to implement HB739 by clarifying procedures to be used by county officials when assessing and reporting recovered taxes on any improper homeowner's exemption and to clarify how to calculate the total levy for any taxing district with multiple funds. To make technical corrections.

Rule 961 is being amended to clarify which small acreages used as forestlands and contiguous with other property used as forestland and owned by the same owner are eligible for valuation and property taxation pursuant to Chapter 17, Title 63, Idaho Code. To make technical corrections.

Rule 988 is being amended to implement HB799aa relating to the optional property tax exemption in lieu of investment tax credit by making this rule consistent with the revised

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law about regulated operating property and providing reporting procedures for distribution of recaptured taxes. To make technical corrections.

Rule 989 is being created to implement HB799aa relating to recapture provisions of the property tax exemption in lieu of investment tax credit. The new rule establishes notification procedures consistent with income tax investment tax credit procedures and defines terms found in HB799aa relating to the computation of county and state average property tax levies.

Rule 990 is being amended to correct the cross reference to the statute based on the change made by HB538.

Rule 995 is being amended to delete bureaucratic procedures made unnecessary by using Web based notification.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 25th day of August, 2004.

Alan Dornfest, Tax Policy Supervisor
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

006. INCORPORATION BY REFERENCE (Rule 006).

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

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01. Availability Of Reference Material. Copies of the documents incorporated by reference into these rules are available at main office of the State Tax Commission as listed in Rule 005 of these rules. (5-3-03)

02. Documents Incorporated By Reference. The following documents are incorporated by reference into these rules: (5-3-03)

a. “Standard on Ratio Studies” published in 1999 by the International Association of Assessing Officers. (5-3-03)

b. “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 2002~~4~~ for the September through December period by the National Appraisal Guides Incorporated. (~~5-3-03~~)()

c. “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 2002~~4~~ for the September through December period by the National Appraisal Guides Incorporated. (~~5-3-03~~)()

d. “Official Railway Equipment Register” published for ~~each quarter in 2002~~ the last three (3) quarters in 2004 and the first quarter in 2005 by R. E. R. Publishing Corporation, Agent as a publication of Commonwealth Business Media, Inc. (~~5-3-03~~)()

e. “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (~~5-3-03~~)()

f. “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

g. “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

h. “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

i. “Manual of Instructions for the Survey of the Public Lands of the United States” published by the Government Printing Office for the Bureau of Land Management in 1973, Technical Bulletin No. 6. (5-3-03)

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(BREAK IN CONTINUITY OF SECTIONS)

225. DOCUMENTATION FOR NEWLY ORGANIZED OR ALTERED TAXING DISTRICTS OR REVENUE ALLOCATION AREAS (RAAS) UNDER THE JURISDICTION OF URBAN RENEWAL AGENCIES (RULE 225).

Sections 50-2907, 50-2908, 63-215, 63-807, 63-1202, 63-3067~~29B~~, and 63-3638, Idaho Code.

~~(3-15-02)~~(____)

01. Definitions. The following definitions apply for cities, taxing districts, or revenue allocation areas (RAAs) under the jurisdiction of urban renewal agencies being organized or formed or altering boundaries. (3-15-02)

a. Taxing Districts. The term taxing districts as used in this rule means taxing districts and taxing units. (3-15-02)

b. Alter. Alter or any derivatives of the word as used in Section 63-215, Idaho Code, means annex, deannex, or consolidate or derivatives of these words. (3-15-02)

c. Contiguous. Contiguous means being in actual contact or touching along a boundary or at a point and is synonymous with abutting on. (3-15-02)

d. Deannex. Deannex means to delete or remove a portion but not all of a boundary for a city, taxing district, or RAA by completing all legal requirements to establish a new boundary for the city, taxing district or RAA. ~~(3-15-02)~~(____)

e. Disincorporate. Disincorporate or any derivatives of the word as used in Sections ~~63-3067 and~~ 63-3638, Idaho Code, means completing all legal requirements to end the existence of a city. ~~(3-15-02)~~(____)

f. Dissolve. Dissolve or any derivatives of the word as used in Sections ~~63-3067 and~~ 63-3638, Idaho Code, means completing all legal requirements to end the existence of a taxing district or RAA. ~~(3-15-02)~~(____)

g. Legal Description. Legal description means a narrative that describes by metes and bounds a definite boundary of an area of land that can be mapped on a tax code area map and shall include: (3-15-02)

i. Section, township, range and meridian. (3-15-02)

ii. An initial point, being a government surveyed corner, such as a section corner, quarter corner or mineral survey corner. (3-15-02)

iii. A true point of beginning, defined by bearings and distances from the initial point, that begins a new city, taxing district, RAA or any alteration thereto. (3-15-02)

iv. Bearings and distances that continuously define the boundary of any area with a closure accuracy of at least one (1) part in five thousand (5,000). Variations from this closure

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requirement may be approved by the State Tax Commission if the description is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. Such variations may include: (3-15-02)

(1) Boundaries which follow mountain ranges, rivers, highways, lakes, canals and other physical features that are clearly delineated on published U.S. Geological Survey quadrangle maps at scale 1:24,000; or (3-15-02)

(2) References to cardinal directions, government survey distances, and section or aliquot part corners; or (3-15-02)

(3) References to recorded subdivision or town site plats, with copies of such plats; or (3-15-02)

(4) Legislatively established boundaries as defined by reference to Idaho Code sections. (3-15-02)

v. The legal description to annex to or deannex from an existing city, taxing district, or RAA shall plainly and clearly define the boundary lines of the deannexed or annexed area and include a reference to existing boundaries where contiguous. (3-15-02)

h. Map Prepared in a Draftsman-like Manner. Map prepared in a draftsman-like manner means an original graphic representation or precise copy matching the accompanying legal description and drafted to scale using standard mechanical drawing instruments or a computer. The map shall include: (3-15-02)

i. Section, township, range, and meridian identifications. (3-15-02)

ii. North arrow, bar scale, and title block. (3-15-02)

iii. District name and ordinance number or order date. (3-15-02)

iv. Bearing and distance annotation between boundary points or a legend or table identifying the bearing and distance between each set of boundary points. (3-15-02)

v. Clearly defined boundary lines of the newly formed city, taxing district, or RAA or of the alteration to an existing one together with reference to the existing boundary where contiguous. (3-15-02)

vi. Variations from the requirements of ~~Subsection~~ Paragraph 225.01.h., of this rule for what must be included on the map may be approved by the State Tax Commission if the map is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. (3-15-02)()

02. Documentation to Be Filed for Newly Created or Altered Cities, Taxing Districts, or RAAs. The following documentation shall be filed with the county assessor, county recorder, and the State Tax Commission no later than thirty (30) days following the effective date of any action creating or altering a city, taxing district, or RAA boundary, but no later than

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January 10 of the following year when any action creating or altering said boundary occurs after December 10. (3-15-02)

a. A legal description which plainly and clearly defines the boundary of a newly formed city, taxing district, or RAA or the boundary of an alteration to an existing one. (3-15-02)

b. A copy of a map prepared in a draftsman-like manner or a record of survey as defined by Chapter 19, Title 55, Idaho Code, which matches the legal description. (4-5-00)

c. A copy of the ordinance or order effecting the formation or alteration. (4-5-00)

03. Documentation to Be Filed for Disincorporated Cities or Dissolved Taxing Districts, or RAAs. (3-15-02)

a. No later than thirty (30) days following the effective date of the final action disincorporating a city or dissolving a taxing district or RAA, but no later than January 10 of the following year when the final action occurs after December 10, for the distributions of revenue as provided for in Sections 50-2908, 63-1202, 63-306729B and 63-3638, Idaho Code, the disincorporating or dissolving entity shall file a copy of the ordinance or order causing the disincorporation or dissolution with the county assessor, county recorder and the State Tax Commission. If the disincorporating or dissolving entity can provide a map showing the last known boundaries of the entity, this map should accompany the ordinance or order.

~~(3-15-02)~~()

b. Upon receipt of the ordinance or order without an accompanying map of the boundaries from a disincorporating city or dissolving taxing district, or RAA, the State Tax Commission shall prepare and send a list of the affected tax code area number(s) and send a copy of a map showing the affected tax code area(s) to the city, taxing district, or urban renewal agency and to the appropriate assessor(s) and recorder(s) within thirty (30) days except for any ordinance or order received after January 1 when the list and map shall be sent by the fourth Friday of January. (3-15-02)

c. After fourteen (14) days from the date of the mailing of the list of the affected tax code area(s), the State Tax Commission shall process the disincorporation or dissolution unless it receives a response from the disincorporating city, or dissolving taxing district, appropriate urban renewal agency, appropriate recorder(s) or appropriate assessor(s) that an error exists in the identification of the tax code area(s). (3-15-02)

04. Digital Map Information. Digital map information in a format usable by the State Tax Commission may be submitted in addition to or as a substitute for any cloth, film, or paper copy maps. Such information shall be accompanied by metadata that clearly defines map projection, datum and attributes. (3-15-02)

05. Deadline for Completion. December 31 of the current year shall be the deadline for completing of any action that creates, alters, or dissolves any taxing district or RAA or creates, alters or disincorporates any city requiring a revision of the State Tax Commission's tax code area maps for the following year, unless the law provides otherwise. (3-15-02)

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06. Approval of Property Tax Levy or Revenue Allocation. For the purpose of levying property taxes or receiving revenue allocations no newly formed or altered city, taxing district, or RAA shall be considered formed or altered by the State Tax Commission if it:

(3-15-02)

a. Fails to provide the correct documentation plainly and clearly designating the boundaries of a newly formed city, taxing district, or RAA or of an alteration to an existing one; or

(3-15-02)

b. Fails to provide the correct documentation in sufficient time for the State Tax Commission to comply with Rule 404 of these rules; or

(4-5-00)

c. Has boundaries which overlap with like cities, taxing districts or RAAs. (3-15-02)

07. Notification of Approval or Disapproval. The State Tax Commission shall send a letter of approval or disapproval to the taxing district or municipality. A copy of said letter shall be submitted to any affected urban renewal agency and the auditor(s) and assessor(s) of the involved county(ies). In the case of disapproval said letter will state the reason(s) for disapproval, the corrective action(s) needed for approval, and the time within which such corrective action(s) must be taken. The State Tax Commission shall send such letter within thirty (30) days of receipt of the document to which the disapproval relates, but not later than the fourth Friday of January except during the first quarter of the calendar year for documents relating to the next tax year.

~~(3-15-02)~~()

08. One Uniform System. The State Tax Commission will prepare one (1) uniform system of tax code area numbers and maps which shall be used by each county for property tax purposes.

(4-5-00)

09. Tax Code Areas. The State Tax Commission shall create a separate, unique number for each tax code area. Only the State Tax Commission shall initiate or change a tax code area number.

(3-15-02)

10. Furnished By The State Tax Commission. The State Tax Commission will furnish annually, without charge, one (1) set of updated tax code area maps, a listing of cities, taxing districts or RAAs included in each tax code area, and a list of changes in city, taxing district or RAA boundaries to each appropriate assessor, recorder, treasurer, and entity with operating property assessed by the State Tax Commission. There shall be a charge for all other tax code area maps.

(3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

304. MANUFACTURED HOME DESIGNATED AS REAL PROPERTY (RULE 304).

Sections 63-304 and 63-305, Idaho Code.

(5-3-03)

01. Statement of Intent to Declare (SID). To declare a manufactured home real

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property, the homeowner shall complete a “Statement of Intent to Declare,” SID form, as prescribed by the State Tax Commission. ~~(3-30-01)~~()

a. All information and signatures requested on the form shall be provided prior to recordation. (3-23-94)

b. The homeowner shall record the completed form. (3-23-94)

c. The homeowner shall provide the assessor a copy of the recorded SID form and the title or Manufacturer’s Statement of Origin (MSO). If proof of ownership is being provided through the MSO, the buyer’s purchase agreement shall be accepted by the assessor pending receipt of the MSO. For the purpose of this rule, the Manufacturer’s Statement of Origin and Manufacturer’s Certificate of Origin are synonymous. (3-30-01)

d. For new manufactured homes, the assessor shall verify that sales or use tax has been collected or shall collect such tax. Any sales or use tax collected by the assessor shall be remitted to the State Tax Commission. (3-30-01)

e. The assessor shall forward a copy of the SID form and the title or MSO to the Idaho Transportation Department. The Idaho Transportation Department will cancel the title. (3-23-94)

02. Reversal of Declaration of Manufactured Home as Real Property. To provide for the reversal of the declaration of the manufactured home as real property, the homeowner shall complete the “Reversal of Declaration of Manufactured Home as Real Property” form as prescribed by the State Tax Commission. The homeowner shall submit this completed form to the assessor within the required time period. (3-30-01)

a. The homeowner shall also submit to the assessor a title report with the appropriate signatures of consent attached and shall make application for a title to the manufactured home. (5-3-03)

b. The assessor shall transmit to the Idaho Transportation Department a copy of the completed reversal form, title report with appropriate signatures of consent, and the application for title to the manufactured home. (3-23-94)

03. Definition of Permanently Affixed. In the year any manufactured home is to be declared to be real property, ~~P~~permanently affixed means complying with the Idaho Manufactured Home Installation Standard as adopted by IDAPA 07.03.12, “Rules Governing Manufactured ~~Mobile~~ Home ~~Licensing~~ Installations,” Section 004. ~~(5-3-03)~~()

04. Status of Manufactured Housing Previously Declared Real. All manufactured housing upon which a “nonrevocable option to declare the mobile home as real property” or SID was correctly completed and properly recorded and filed shall be treated as real property until such time as a reversal (as provided for in Section 63-305, Idaho Code, and this rule) is correctly completed and properly recorded and filed. This status as real property is based on all criteria existing when said manufactured housing was originally declared real property. This property must be treated as real property and considered “permanently affixed” without any need to be

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retrofitted to comply with subsequent changes to the requirements for “permanently affixed,” including changes to the Idaho Manufactured Home Installation Standard as adopted by IDAPA 07.03.12, “Rules Governing Manufactured Home Installations,” Section 004, that occur after the manufactured home was originally declared real property. ()

(BREAK IN CONTINUITY OF SECTIONS)

317. OCCUPANCY TAX ON NEWLY CONSTRUCTED IMPROVEMENTS ON REAL PROPERTY (RULE 317).

Section 63-317, Idaho Code.

(5-3-03)

01. Manufactured Housing Property Subject to Occupancy Tax. Excluding additions to existing improvements, the occupancy tax shall apply to industrial structures and new manufactured housing improvements upon real property, whether under the same or different ownership. Used manufactured housing is not subject to the occupancy tax. The occupancy tax shall also apply to new manufactured housing, as defined in Section 63-317, Idaho Code, excluding additions to existing manufactured housing. (3-23-94)()

02. Value Prorated Monthly. The value for occupancy tax purposes shall be prorated at least monthly. (3-23-94)

03. Notice Of Appraisal. When notifying each owner of the appraisal, the county assessor shall include at a minimum the full market value before any exemptions and before any prorating of the value, the length of time subject to the occupancy tax, and the prorated value. (5-3-03)

04. Examples for Calculation of Value Less Homeowner's Exemption (HO). The following examples show the correct procedure for the calculation of the taxable value subject to the occupancy tax less the homeowner's exemption (HO): ()

a. Example for prorated market value of one hundred thousand dollars (\$100,000) or more.

Full Market Value of Home: \$120,000
Prorated Market Value for 11 Month Occupancy: $\$120,000 \times 11/12 = \$110,000$
Taxable Value: $\$110,000 - \$50,000 \text{ (HO)} = \$60,000$

()

b. Example for prorated market value of less than one hundred thousand dollars (\$100,000).

Full Market Value of Home: \$120,000
Prorated Market Value for 3 Month Occupancy: $\$120,000 \times 3/12 = \$30,000$

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Taxable Value: \$30,000 - \$15,000 (HO) = \$15,000
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045. Market Value. The market value for occupancy tax purposes shall be entered on an occupancy tax valuation roll. Occupancy tax shall not be included in the assessed value of any taxing district, but must be declared in the certified budget. (3-23-94)

056. Allocation to Urban Renewal Agencies. Beginning with any distribution of occupancy tax resulting from occupancy taxes levied after approval of levies for the year 2000, the revenue shall be allocated to any applicable school district and urban renewal agency. The revenue distribution to any applicable school district must be satisfied prior to the distribution to the urban renewal agency. Only the occupancy tax revenue from properties within the revenue allocation area shall be distributed in this manner. School districts shall be allocated an amount of occupancy tax equal to four tenths of one percent (0.4%) of the prorated value of property subject to occupancy tax, provided that such property is located within the school district and within the revenue allocation area of an urban renewal agency. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

404. OPERATOR'S STATEMENT -- CONTENTS (RULE 404).

Sections 63-401 and 63-404, Idaho Code.

(5-3-03)

01. Operator's Statement. In the operator's statement, the number of miles of railroad track, electrical and telephone wire, pipeline, etc., must be reported to the hundredth mile in decimal form (0.00) in each taxing district or taxing authority and must be reported by the uniform tax code area method. (7-1-99)

02. Tax Code Area Maps. By March 1 of each year, the State Tax Commission shall furnish to all entities having operating property within the state of Idaho, except private railcar fleets, a list of all changes in tax code area boundary lines. In case the State Tax Commission receives corrections to any tax code area boundaries, these changes must be furnished by March 15. Every day that the tax code area map deadline is extended beyond March 1 allows for an automatic operator's statement extension equal to the delay. The reporting entity shall review the list of changes to identify any tax code areas, within which any of the entity's operating property is located. The reporting entity shall report, under Subsection 404.01 of this rule based on these identified tax code areas. The State Tax Commission shall provide the tax code areas maps to the reporting entity as provided for in Rule 225 of these rules. (5-3-03)

03. Reporting of Mileage. The following procedures apply for reporting mileage.

(7-1-99)

a. Railroad Track Mileage. The railroad track mileage shall be reported by the name of the main line and branch lines with the track mileage for the main line and branch lines reported as Main Track Miles. Track miles consisting of passing track, yard switching, spurs,

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sidings, etc., shall be reported as Secondary Track Miles. (5-3-03)

b. Electric Power Line Mileage. The electric power companies shall report electric power line mileage by transmission and distribution lines. The transmission lines are the lines at a primary source of supply to change the voltage or frequency of electricity for the purpose of its more efficient or convenient transmission; lines between a generating or receiving point and the entrance to a distribution center or wholesale point; and lines whose primary purpose is to augment, integrate, or tie together the sources of power supply. The distribution lines are the lines between the primary source of supply and of delivery to customers, which are not includible in transmission lines. Cooperative electrical associations may include lines designed to accommodate thirty-four thousand five hundred (34,500) volts or more as transmission or distribution lines. Transmission or distribution lines shall be reported by single linear wire mile. (5-3-03)

c. Telephone Wire Mileage. All telephone wire mileage shall be reported on a single linear wire mile basis, and include any ground wires. (5-3-03)

d. Natural Gas and Water Distribution Pipeline Mileage. All natural gas and water distribution companies shall report pipeline miles on a three (3) inch comparison basis. For example, a company with five (5) miles of six (6) inch pipe will report ten (10) pipeline miles: five (5) times six (6) divided by three (3) equals ten (10) miles. (5-3-03)

e. Transmission Pipeline Mileage. Transmission pipeline mileage is reported in actual pipe sizes, without adjustment, because the pipe is normally uniform in size over long distances. (5-3-03)

04. Situs Property. Situs property includes microwave stations, ~~and~~ radio relay towers, and thermal electric generation facilities constructed after January 1, 2004, and located in or within five (5) miles of an incorporated city. This property is not apportioned on the basis of mileage. The investment in this property shall be reported in the tax code area(s), within which it is located. (7-1-99)()

05. Record of Property Ownership. The following procedures apply for maintaining records of operating property ownership. (7-1-99)

a. STC Form R. A record of each property owned, leased, or otherwise operated by each railroad, private railcar fleet or public utility shall be maintained by the State Tax Commission, the appropriate railroad, private railcar fleet or public utility, and the appropriate county assessor's office. Each record shall be maintained on a form identified as STC Form R. The State Tax Commission shall send a copy of each STC Form R to the appropriate company and the appropriate county assessor's office. (7-1-99)

b. Identification of Operating Property and Nonoperating Property. On the STC Form R, the State Tax Commission shall identify which property is operating property and which property is nonoperating property. (5-3-03)

c. Filing of Property Ownership by Railroad Companies. Each railroad company shall file the original railroad right-of-way maps with the State Tax Commission. Each railroad

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shall file an STC Form R, only, for property that is acquired, leased, or transferred between operating and nonoperating status, or sold during the prior year. (7-1-99)

06. Filing Date for Operator's Statement. By April 30 each year, each railroad, private railcar fleet, and or public utility operating in Idaho shall file information pertinent to the entity's ownership and operation with the State Tax Commission. This information must be reliable for preparing an estimate of market value. For each entity submitting a written request for an extension on or before April 30, the State Tax Commission may grant an extension of the filing date until May 31. An automatic extension beyond April 30 may be granted as set out in Subsection 404.02 of this rule. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

609. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS (RULE 609).

Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code. (3-15-02)()

01. Homeowner's Exemption. This exemption shall also be known as the homeowner's exemption. (3-15-02)

~~**02. Residential Improvements.** Primary dwelling place means the claimant's dwelling place before April 15 of the year for which the claim is made. If the residential improvement becomes the claimant's primary dwelling place between January 1 and April 15, the claimant shall not have previously applied for the exemption under Section 63-602G, Idaho Code, for the same year. The primary dwelling place is the single place where a claimant has his true, fixed, and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates as his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided before April 15 of the year for which the claim is made and:~~ (3-15-02)

~~**a.** At least six (6) months during the prior year; or~~ (3-23-94)

~~**b.** The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or~~ (3-23-94)

~~**c.** The majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one (1) year.~~ (3-23-94)

~~**03. Requirements.** If these requirements are not met, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration excluding utilities to occupy the dwelling. A care facility is a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded as defined in~~

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~~Section 39-1301, Idaho Code, or a facility as defined in Section 39-3302(15), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection, and security.~~ (3-15-02)

~~**04. Owner.** "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate. "Owner" shall also include any person who is a beneficiary of a trust. "Owner" includes a vendee in possession under a land sale contract. An "owner" shall also include a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation if that person has no less than a five percent (5%) ownership interest in the entity.~~ (3-20-04)

052. Partial Ownership. Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption; however, the amount of the exemption shall be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. ~~Partial ownership, for purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person. The combined community property interests of both spouses shall not be considered partial ownership.~~ The proportional reduction ~~required under this subsection~~ shall not apply to ~~community property interests.~~ Additionally, ~~there is no reduction to~~ the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than five percent (5%) ownership interest in the entity unless any ownership interest is shared by any entity other than the limited partnership, limited liability company or corporation. (3-15-02)()

~~**06. Certification.** As an owner, the applying partner of a limited partnership, member of a limited liability company or shareholder of a corporation with no less than a five percent (5%) ownership interest in the entity must certify to the county assessor that he has not made application for this exemption in any other county or on any other residential improvement in this county. Although more than one residential improvement owned by the same partnership, limited liability company or corporation may qualify for this exemption, each partner, member or shareholder shall not receive this exemption on more than one residential improvement.~~ (3-15-02)

073. Determination of Residency. The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county Board of Equalization for the sole purpose of providing one indicator of eligibility for the homeowner's exemption. According to Section 63-3077(4), Idaho Code, this information is confidential and is not subject to public disclosure. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

613. PROPERTY EXEMPT FROM TAXATION -- SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND (RULE 613).

Section 63-602K, Idaho Code.

()

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PENDING RULE**01. Definitions.** (4-5-00)

a. Taxable Value of Agricultural Land. The taxable value of agricultural land shall be the landlord's share of net income per acre, capitalized by the annual rate required by Section 63-602K, Idaho Code, plus a component for the local tax rate. The component for local taxes achieves the necessary allowance for the expense of property taxes. (4-5-00)

b. Speculative Portion. The speculative portion is the difference between the current market value and the taxable value of agricultural land. The market value of agricultural land is established from market sales of similar land. (4-5-00)

c. Economic Rent. Economic rent is the average gross income per acre received by a landlord from either a cash rent or crop share rental agreement. (4-5-00)

d. Net Income. Net income is determined by deducting the landlord's share of current expenses from economic rent per acre. (4-5-00)

02. Calculation of Net Income from Cash Rent. Net Income from cash rent is calculated in the following manner. (4-5-00)

a. Crops Grown. Determine the crops typically grown in the area. (4-5-00)

b. Economic Rent. Determine the average per acre gross income from individual crop rents typical to the area over the immediate past five (5) years. (4-5-00)

c. Landlord's Expenses. Determine the landlord's share of typical contracted expenses paid in the immediately preceding growing season. (4-5-00)

d. Landlord's Net Income. Subtract the landlord's share of typical contracted expenses from the average gross income per acre for the immediately preceding growing season to determine net income. (4-5-00)

03. Calculation of Net Income from Crop Share Rent. Net income from crop share rent is calculated in the following manner. (4-5-00)

a. Crops Grown. Determine the crops typically grown in the area. (4-5-00)

b. Average Crop Production. Determine average crop production per acre based on the most recent five (5) years. (4-5-00)

c. Average Commodity Prices. Determine average commodity prices based on the most recent five (5) years. (4-5-00)

d. Gross Income. Multiply average crop production per acre times the average commodity price to determine gross income per acre. (4-5-00)

e. Landlord's Share of Gross Income. Determine the landlord's share of gross income

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per acre from a crop rotation typical to the area. (4-5-00)

f. Expenses. Determine the landlord's share of water, fertilizer, chemical, seed and harvest cost per acre for the immediately preceding growing season. (4-5-00)

g. Net Income. Subtract the landlord's share of expenses from the landlord's share of gross income to determine net income. (4-5-00)

04. Determination of Five Year Average Crop Prices. The State Tax Commission shall determine five (5) year average crop prices to be used in determining net income by surveying publicly available data from various sources, including the annual crop summary published by the Idaho Agricultural Statistics Service. Average crop prices determined in this manner by the State Tax Commission should be considered guidelines subject to modification based on local market data. ()

045. Examples of Calculation of Taxable Value of Agricultural Land. The following examples show calculations for the taxable value of agricultural land. Example in Paragraph '613.05.a.' shows one calculation of capitalization rate (cap rate), example in Paragraph '613.05.b.' shows calculations using cash rent agreements and example in Paragraph '613.05.c.' shows calculations using crop share agreements. (4-5-00)()

a. Capitalization rate calculation example:

TAX CODE AREAS	PROPERTY TAX RATES
8	1.1323951%
9	1.1186222%
10	1.1226782%
11	1.1714841%
12	1.1674300%
13	1.0692041%
15	1.1603100%
16	1.1323951%
17	1.1323951%

AVERAGE = 1.13%

FARM CREDIT ~~BANK~~ SYSTEM INTEREST RATE = 8.22%

TOTAL CAPITALIZATION RATE (CAP RATE) = 9.35%

(4-5-00)()

b. Cash rent agreement calculation example:

CROPS	CONTRACT RENTS PER ACRE	ROTATION IN PERCENT	WEIGHTED INCOME PER ACRE
Barley	\$100.00	14.42%	\$ 14.42

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CROPS	CONTRACT RENTS PER ACRE	ROTATION IN PERCENT	WEIGHTED INCOME PER ACRE
Beans	\$100.00	22.46%	\$ 22.46
Beets	\$170.00	20.33%	\$ 34.56
Corn/Grain	\$100.00	0.00%	\$ 0.00
Corn/Silage	\$110.00	0.00%	\$ 0.00
Hay/Alfalfa	\$120.00	21.32%	\$ 25.58
Potatoes	\$200.00	0.00%	\$ 0.00
Wheat	\$100.00	21.48%	\$ 21.48
Peas	\$125.00	0.00%	\$ 0.00
Oats	\$110.00	0.00%	\$ 0.00
TOTAL INCOME PER ACRE			\$118.49 <u>50</u>

Value per acre equals net income per acre divided by CAP rate:

TOTAL INCOME PER ACRE	\$118.49 <u>50</u>
LESS WATER COSTS	\$ 23.00
LESS MANAGEMENT(@ 5%)	\$ 5.92 <u>3</u>
NET INCOME PER ACRE	\$ 89.57
CAP RATE	9.35%
VALUE PER ACRE	\$958.00

(4-5-00)()

c. Crop share agreement calculation example:

Crop	Yield	Price	Gross Income	Landlord Share	Landlord Share Gross Income	Rotation Percent	Per Acre Share of Gross Inc.
Barley	100.00	\$ 2.83	\$283.00	33.33%	\$94.32	14.42%	\$13.60
Beans	20.00	\$21.20	\$424.00	33.33%	\$141.32	22.46%	\$31.76 <u>4</u>
Beets	23.00	\$39.74	\$914.02	25.00%	\$228.51	20.33%	\$46.45 <u>6</u>
G/Corn	0.00	\$ 3.22	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
S/Corn	0.00	\$24.40	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
Hay	5.50	\$84.10	\$462.55	50.00%	\$231.28	21.32%	\$49.30 <u>1</u>
Potatoes	0.00	\$ 4.74	\$ 0.00	25.00%	\$ 0.00	0.00%	\$ 0.00
Wheat	98.00	\$ 3.73	\$365.54	33.33%	\$121.83	21.48%	\$26.16 <u>7</u>
Peas	0.00	\$ 8.68	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
Oats	0.00	\$ 1.66	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00

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Crop	Yield	Price	Gross Income	Landlord Share	Landlord Share Gross Income	Rotation Percent	Per Acre Share of Gross Inc.
TOTAL INCOME PER ACRE						100.00%	\$167.268

Value per acre equals net income per acre divided by CAP rate:

Total Income Per Acre \$167.25	Expenses
	Water = \$ 23.00
	Fertilizer = \$ 14.77
	Chemicals = \$ 9.04
	Seed = \$ 2.05
	Management = \$ 8.36
	Harvest = \$ 14.67
	TOTAL EXPENSE PER ACRE = \$ 71.9089
	NET INCOME = \$ 95.369
	CAP RATE = 9.35%
	VALUE PER ACRE = \$1,049.4720

(4-5-00)()

056. Cross Reference. *For the years 1999 and 2000, see Rule 165 of these rules. Beginning in the year 2001, see Rule 645 of these rules.* (4-5-00)()

07. Notification. In addition to providing notification of the Farm Credit System interest rate, the State Tax Commission will annually notify each county assessor of the most recent five (5) year average crop prices for the state. ()

(BREAK IN CONTINUITY OF SECTIONS)

803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803).

Sections 63-602G(5), 63-803, 63-3029B(4), and 63-3067 3638(10), Idaho Code. (3-15-02)()

01. Definitions. (4-5-00)

a. “Dollar Certification Form” (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each Board of County Commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear

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and convincing documentary evidence establishes that a budget results in an unauthorized levy ~~requesting~~ and action as provided in Section 63-809, Idaho Code. ~~(3-20-04)~~()

b. “Prior Year’s Market Value for Assessment Purposes.” Prior year’s market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code, and for fire districts, pursuant to Section 31-1420(3), Idaho Code. (4-5-00)

c. “Annual Budget.” For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(f), 63-802(1)(g), or 31-1420(3), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(f), 63-802(1)(g), and 31-1420(3), then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*				
	FY 1999	FY 2000	FY 2001	FY 2002
Annual Budget	\$10,000	\$10,000	\$10,700	\$11,621
3% Increase	\$0	\$300	\$321	\$349
Subtotal	\$10,000	\$10,300	\$11,021	\$11,970
1999 Election Amount	\$0	\$400 of \$1,000	\$600 of \$1,000	\$0
Certified Budget	\$10,000	\$10,700	\$11,621	\$11,970

*The Library District with zero dollars (\$0) in value for new construction and/or annexation approves an additional budget amount of one thousand dollars (\$1,000) in 1999, but only certifies four hundred dollars (\$400) for the year 2000. Note the example does not account for any foregone amount resulting from the district's decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999. ~~(3-20-04)~~()

d. “Property Tax Funded Budget.” Property tax funded budget means that portion of any taxing district’s budget certified to the Board of County Commissioners, approved by the State Tax Commission, and subject to the limitations of Section 63-802, Idaho Code. (3-20-04)

e. “Recovered/Recaptured Property Tax List.” Recovered/recaptured property tax list means the report sent by the county auditor to the appropriate taxing district(s)/unit(s) by the first Monday in August and to the State Tax Commission with the L-2 Forms, listing the amount of revenue distributed to each appropriate taxing district/unit as recovery of property tax under Section 63-602G(5), Idaho Code, and/or as recapture of property tax under Section 63-3029B(4), Idaho Code, during the twelve (12) month period ending June 30 each year. ()

f. “Taxing District/Unit.” Taxing district/unit means any governmental entity with authority to levy property taxes as defined in Section 63-201, Idaho Code, and those

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noncountywide governmental entities without authority to levy property taxes but on whose behalf such taxes are levied or allocated by an authorized entity such as the county or city for such entities as county road and bridge funds or urban renewal agencies, respectively. ()

02. Budget Certification. The required budget certification shall be made to each Board of County Commissioners representing each county in which the district is located. ~~The certification shall be on a~~ by submitting the completed L-2 Form prescribed by the State Tax Commission. (4-5-00)()

03. Budget Requested Documents. Each Board of County Commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the property tax funded portion of its annual budget. The Board of County Commissioners shall not submit other documents unless requested to do so by the State Tax Commission. Documents not to be submitted to the State Tax Commission unless requested include newspaper advertisements, school district budget books, entire budget documents, other than the budget request, and similar documents. ~~Each taxing district certifying a budget request to finance the property tax funded portion of its annual budget shall complete the State Tax Commission's L-2 Form.~~ (5-3-03)()

04. L-2 Form Contents. Each taxing district or unit completing an L-2 Form shall include the following information on or with this form. (3-20-04)

a. "Department or Fund." Identify the department or fund for which the taxing district is requesting a budget for the current tax year. (4-5-00)

b. "Total Approved Budget." List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax. (4-5-00)

c. "Cash Forward Balance." List any money brought forward from a prior year to help fund the approved budget. Cash forward balance (Column 3) is the difference between the total approved budget (Column 2) and the sum of amounts reported as other revenue not shown in Column 5 (Column 4), agricultural equipment property tax replacement (Column 5), and balance to be levied (Column 6). (3-15-02)

d. "Other Revenue not Shown in Column 5." List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. (3-15-02)

e. ~~"Agricultural Equipment Property Tax Replacement." Report the amount of money to be received under Section 63-3067, Idaho Code. For school districts, report only the appropriate amount of such money to be subtracted as provided in Subsection 803.06 of this rule.~~ sum of only the following: (3-20-04)()

i. The amount of money received annually under Section 63-3638(10), Idaho Code, as replacement revenue for the agricultural equipment exemption under Section 63-602EE, Idaho Code (For school districts, the amount of money to be included is only the appropriate amount of

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such money to be subtracted, as provided in Subsection 803.06 of this rule, not all such money.);
()

ii. The amount of money received as recovery of property tax exemption under Section 63-602G(5), Idaho Code, and listed on the “Recovered/recaptured property tax list”;
()

iii. The amount of money received as recapture of the property tax benefit under Section 63-3029B(4), Idaho Code, and listed on the “Recovered/recaptured property tax list”; and
()

iv. The appropriate amount of money listed on the statement and distributed to the county and each appropriate city under Section 63-2603, Idaho Code, as county property tax relief and detention facility debt retirement.
()

f. “Balance to be Levied.” Report the amount of money included in the total approved budget to be derived from property tax. (3-15-02)

g. Other Information. Provide the following additional information. (4-5-00)

i. The name of the taxing district or unit; (3-20-04)

ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code; (4-5-00)

iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district; and (5-3-03)

iv. For a hospital district which has held a public hearing, a signature certifying such action. (4-5-00)

h. Attached Information. Other information submitted to the county auditor with the L-2 Form. ~~(3-20-04)~~()

i. For all taxing districts, L-2 worksheet. (3-20-04)

ii. For newly formed recreation or auditorium districts, a copy of the petition forming the district showing any levy restrictions imposed by that petition. (3-20-04)

iii. For any new ballot measures (bonds, overrides, permanent overrides, supplemental maintenance and operations funds, and plant facility funds), notice of election and election results. (3-20-04)

iv. Voter approved fund tracker. (3-20-04)

v. For fire districts, a copy of any new agreements with utility companies providing for payment of property taxes by that utility company to that fire district. (3-20-04)

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vi. For any city with city funded library operations and services at the time of consolidation with any library district, each such city must submit a certification to the Board of County Commissioners and the Board of the Library District reporting the dedicated portion of that city's property tax funded library fund budget and separately reporting any portion of its property tax funded general fund budget used to fund library operations or services at the time of the election for consolidation with the library district. (3-20-04)

vii. For any library district consolidating with any city that had any portion of its property tax funded budget(s) dedicated to library operations or services at the time of the election for consolidation, each such library district must submit to the Board of County Commissioners a copy of the certification from that city reporting the information provided for in Subsection Subparagraph 803.04.h.vi., of this rule. ~~(3-20-04)~~()

05. Special Provisions for Fire Districts Levying Against Operating Property. To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met: (3-30-01)

a. The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)

b. Said new agreement succeeds the original agreement; and (3-30-01)

c. In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

06. Special Provisions for Property Tax Replacement Pursuant to Section 63-~~3067~~ 3638, Idaho Code. Property tax replacement monies received pursuant to Section 63-~~3067~~ 3638, Idaho Code, must be reported on the L-2 Form. For all taxing districts except school districts, these monies must be subtracted from the "balance to be levied". For school districts, only "appropriate property tax replacement monies" are to be subtracted. The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Sections 63-802 and 33-802, Idaho Code, shall be based on the sum of these property tax replacement monies and the amount actually levied, or, for school districts, the sum of "appropriate property tax replacement monies" and the amount actually levied. ~~(3-20-04)~~()

a. "Appropriate property tax replacement monies" is determined only for school districts and means all property tax replacement monies received pursuant to Section 63-~~3067~~ 3638, Idaho Code, except an amount equal to four thousands (0.004) multiplied by the year 2000 value of property exempted in Section 63-602EE, Idaho Code. If the amount so determined is greater than the total amount of property tax replacement monies, no property tax replacement monies received pursuant to Section 63-~~3067~~ 3638, Idaho Code, shall be subtracted from the school district maintenance and operation's (M&O) budget. ~~(5-3-03)~~()

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b. After receipt from the counties of the year 2000 tax charges on property exempted in Section 63-602EE, Idaho Code, but no later than July 23, 2001, the State Tax Commission shall notify each county clerk of the amount of property tax replacement money to be paid to each taxing district in that county. Beginning in 2002 and thereafter, the State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money to be paid to a taxing district or the “appropriate amount of property tax replacement money” to be paid to any school district changes from the amount paid in the preceding year. In 2002, the State Tax Commission shall also notify each county clerk of the amount of the “appropriate property tax replacement monies” to be subtracted before computing the M&O levy for each school district. (5-3-03)

c. By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies that will be received and shall further notify each school district of the appropriate amount to be subtracted before the M&O levy is computed. (5-3-03)

d. The subtraction required in Subsection 803.06 of this rule may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code, and from school district maintenance and operation funds made pursuant to Section 33-802, Idaho Code. (3-15-02)()

e. Levy limits shall be tested against the amount actually levied. (3-15-02)

07. Special Provisions for Library Districts Consolidating with Any City's Existing Library Operations or Services. For any library district consolidating with any city's existing library operations or services, the amount of the dedicated property tax funded general fund and library fund budgets certified by the city under ~~Subsection~~ Subparagraph 803.04.h.vi., of ~~these~~ this rules shall be added to that library district's property tax funded budget in effect at the time of the election for consolidation. This total shall be used as this district's property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (3-20-04)()

08. Special Provisions for Cities with Existing Library Operations or Services Consolidating with Any Library District. For any city with existing library operations or services at the time of consolidation with any library district, the amount of the dedicated property tax funded library fund budget included in the certification by the city under ~~Subsection~~ Subparagraph 803.04.h.vi., of ~~these~~ this rules shall be subtracted from that city's total property tax funded budget in effect at the time of the election for the consolidation. This difference shall be used as this city's property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (3-20-04)()

09. Special Provisions for Calculating Total Levy Rate for Taxing Districts or Units with Multiple Funds. Whenever the “Calculated Levy Rate” column of the L-2 Form indicates that a levy rate has been calculated for more than one (1) fund for any taxing district or unit, the “Column Total” entry must be the sum of the levy rates calculated for each fund. Prior to this summation, the levy rates to be summed must be rounded or truncated at the ninth decimal place. No additional rounding is permitted for the column total. ()

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(BREAK IN CONTINUITY OF SECTIONS)

961. FORESTLANDS OF LESS THAN FIVE ACRES AND CONTIGUOUS PARCELS (RULE 961).

~~Forest land of four and nine hundred ninety-nine one thousandths (4.999) contiguous acres or less shall not be eligible for valuation and taxation as forest land, whether or not the landowner owns other parcels which are eligible. The five (5) acre size is determined exclusive of homesite.~~ Sections 63-1702 and 63-1703, Idaho Code. A parcel of forestland that is less than five (5) acres is not eligible for valuation and taxation as forestland unless the land is contiguous with one (1) or more other parcels of forestland under the same ownership and the contiguous parcels together constitute five (5) acres or more of forestland as defined in Section 63-1701, Idaho Code. The five (5) acre minimum requirement must exclude any homesite. In the following examples each parcel of land is forestland as defined in Section 63-1701, Idaho Code, unless otherwise stated in the example. (3-30-01)()

01. Example 1. A landowner owns a fifteen (15) acre parcel which contains four (4) acres of forestland, nine (9) acres of irrigated row crop, and two (2) acres of homesite. The four (4) acres of forestland is not eligible for valuation and taxation as forestland. (7-1-93)()

02. Example 2. ~~Landowner owns eight (8) one (1) acre parcels of forest, and one (1) five hundred (500) acre parcel of forest. The eight (8) one (1) acre parcels are not eligible for valuation and taxation as forest lands, unless contiguous to the five hundred (500) acre parcel, or at least five (5) of the one (1) acre parcels are contiguous to each other.~~ A landowner owns five hundred and six (506) acres consisting of one (1) five hundred (500) acre parcel of forestland and six (6) one (1) acre parcels of forestland, that are not contiguous either to one another or to the five hundred (500) acre parcel. The five hundred (500) acre parcel is eligible for valuation and taxation as forestland. The six (6) one (1) acre parcels, are not eligible for valuation and taxation as forestland. (3-30-01)()

03. Example 3. A landowner owns five hundred and six (506) acres consisting of one (1) five hundred (500) acre parcel of forestland and six (6) one (1) acre parcels of forestland that are contiguous to the five hundred (500) acre parcel but may or may not be contiguous to one another. The entire five hundred and six (506) acres are eligible for valuation and taxation as forestland. ()

04. Example 4. A landowner owns six (6) noncontiguous one (1) acre parcels of forestland. The six (6) one (1) acre parcels are not eligible for valuation and taxation as forestland. ()

05. Example 5. A landowner owns six (6) contiguous one (1) acre parcels of forestland. The six (6) one (1) acre parcels are eligible for valuation and taxation as forestland. ()

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(BREAK IN CONTINUITY OF SECTIONS)

988. ~~ELECTION OF~~ QUALIFIED PROPERTY FOR EXEMPTION (RULE 988).

Sections 63-302, 63-313, 63-404, and 63-3029B, Idaho Code. (3-20-04)(____)

01. Definitions. The following definitions apply for the purposes of the property tax exemption under Section 63-3029B, Idaho Code, and do not decide investment tax credit eligibility for Idaho income tax purposes. (3-20-04)

a. ~~Calendar year immediately following the taxable y~~Year in which the ~~property was investment~~ is placed in service. “~~Calendar year immediately following the taxable y~~Year in which the ~~property was investment~~ is placed in service” means the calendar year ~~beginning after the calendar year~~ the property was put to use or placed in a condition or state of readiness and availability for a specifically assigned function in the production of income. ~~For example, all property meeting the following criteria must be granted the property tax qualified investment exemption for calendar years 2004 and 2005:~~ (3-20-04)(____)

~~i. The property is eligible for the investment tax credit for Idaho income tax purposes.~~ (3-20-04)

~~ii. The taxpayer had an Idaho loss for income tax purposes in the correct year, as indicated in IDAPA 35.01.01, “Income Tax Administrative Rules,” Rule 719, prior to making the election.~~ (3-20-04)

~~iii. The property was first placed in service in Idaho between January 1, 2003 and December 31, 2003.~~ (3-20-04)

~~iv. The taxpayer completed and will file a copy of the State Tax Commission election form (Form 49E) with the correct year’s income tax return.~~ (3-20-04)

~~v. The taxpayer completed and timely returned a personal property declaration to each appropriate assessor listing the property and attaching the completed Form 49E.~~ (3-20-04)

b. Operator’s Statement. The “operator’s statement” is the annual statement listing all property subject to assessment by the State Tax Commission and prepared under Section 63-404, Idaho Code. (3-20-04)

c. Personal Property Declaration. A “personal property declaration” is any form required for reporting personal property or transient personal property to the county assessor under Sections 63-302 or 63-313, Idaho Code, respectively. (3-20-04)

d. Qualified Investment. “Qualified investment” means property that would have otherwise been taxable for property tax purposes and is eligible or qualified under Section 63-3029B, Idaho Code, provided that property is reported on the personal property declaration or operator’s statement and is designated as exempt from property tax for two (2) years on Form 49E. (3-20-04)

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e. Qualified Investment Exemption. The “qualified investment exemption” (QIE) referred to in this rule is the property tax exemption under Section 63-3029B, Idaho Code.
(3-20-04)

02. Designation of Property for Which Exemption Is Elected. The owner shall designate the property on which the QIE is elected. The owner shall make this designation on Form 49E and attach it to ~~the~~ a timely filed personal property declaration or, for operating property, the timely filed operator’s statement. The description of the property on Form 49E must be adequate to identify the property to be granted the exemption. In addition to all other steps required to complete the personal property declaration or operator’s statement, the owner must provide on the personal property declaration or operator’s statement the date the item elected for the QIE was placed in service.
(3-20-04)()

03. Election for Investments Not Otherwise Required to Be Listed on the Personal Property Declaration. For investments, like single purpose agricultural or horticultural structures, that are not otherwise required to be listed on the personal property declaration, the owner must list that property to elect the QIE. As with any property designated for the QIE, the owner must attach Form 49E to the personal property declaration.
(3-20-04)

04. Continuation of Listing. For all property designated for QIE, even though that property is exempt for two (2) years, the owner must list that property on the personal property declaration or operator’s statement in the initial year for which the QIE is claimed and the following four (4) consecutive years, unless that property has been sold, otherwise disposed of, or ceases to qualify pursuant to Section 63-3029B, Idaho Code.
(3-20-04)

05. Period of QIE. The QIE shall be granted for the two (2) calendar years immediately after the end of the calendar year in which the property acquired as a qualified investment was first placed in service in Idaho.
(3-20-04)

06. Election Specificity. The QIE election provided by Section 63-3029B, Idaho Code, shall be specific to each qualified item ~~of property~~ listed on the personal property declaration or operator’s statement. An item ~~of property~~ that is a qualified investment, but for which there is no QIE election during the year after the ~~“calendar year immediately following the taxable year in which the property was investment is placed in service”~~ in Idaho, is not eligible for the QIE.
(3-20-04)()

07. Notification ~~To State Tax Commission~~ by Assessor. (3-20-04)()

a. Upon Receipt of Form 49E or a Listing. Upon receiving Form 49E or any listing provided to comply with Subsection 988.08 or 988.12 of ~~these~~ this rules, the county assessor shall send a copy of this form or listing to the State Tax Commission.
(3-20-04)()

b. Upon Discovery of Changes. Upon discovering that property granted the QIE was sold, otherwise disposed of, or ceased to qualify under Section 63-3029B, Idaho Code, within the ~~five-year~~ (5) year period beginning with the date the property was placed in service, the county assessor shall notify the State Tax Commission and the taxpayer immediately. The county assessor shall also provide this notification upon discovery that the owner first claiming the QIE failed to list the item ~~of property~~ on any personal property declaration or failed to file a personal

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property declaration in any year during this five-~~year~~ (5) year period. This notice shall include:

(3-20-04)()

- i. Owner. Name of the owner receiving the QIE. (3-20-04)()
- ii. Property description. A description of the property that received the QIE. (3-20-04)()
- iii. New or used. State whether the individual item was purchased new or used. ()
- iv. Date placed in service. The date the owner reported the item was first placed in service in Idaho. (3-20-04)()
- v. First year value of QIE. For each item, the amount of exempt value in the first year the QIE was elected and an identification of the year. (3-20-04)()
- vi. Second year value of QIE. For each item, the amount of exempt value in the second year after the QIE was elected. ()
- vii. Tax code area number. For each item, the number of the tax code area within which that item was located. ()

08. Moved Personal Property. In order to provide unmistakable identification of the property, certain taxpayers must send written notification by the date provided in Section 63-302, 63-313, or 63-404, Idaho Code, when moving property that previously received the QIE. This notification: (3-20-04)

a. Is required of taxpayers moving locally assessed property between counties in Idaho during the five-~~year~~ (5) year period beginning the date that property was placed in service; (3-20-04)()

i. ~~For locally assessed property,~~ The taxpayers send this notification to the assessor in the county that granted the QIE and the assessor in any Idaho county to which the property has been moved; (3-20-04)()

ii. ~~For state tax commission assessed operating property owned by electric distribution, generation, and transmission companies, the taxpayers send this notification to the state tax commission;~~ (3-20-04)

bii. The taxpayers ~~must~~ include a listing which describes the property exactly as it was described on the original Form 49E or cross references the property originally listed on Form 49E; ~~and~~ (3-20-04)()

eb. Is not required of taxpayers when the property is State Tax Commission assessed nonregulated operating property ~~other than property owned by electric distribution, generation, and transmission companies.~~ (3-20-04)()

09. Notification Regarding Transient Personal Property. For transient personal

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property elected for the QIE, the definition of home county in Section 63-313, Idaho Code, and Rule 313 of these rules, applies. When a home county receives information of an election for QIE and a notice that the exempt property was used in another county in Idaho, the home county must forward information identifying that property to the other county(ies) in accordance with procedures in Section 63-313, Idaho Code. Also, the home county assessor shall send a copy of this notice to the State Tax Commission. (3-20-04)

10. Partial-Year Assessments. Property assessed based on a value prorated for a portion of the year in which the property is first placed in service may still be eligible for the QIE in the subsequent two (2) calendar years, provided the QIE is elected. (3-20-04)

11. Limitation on Amount of Exemption. (3-20-04)

a. New Property. The QIE shall be for the full market value for assessment purposes for new property that is a qualifying investment. (3-20-04)

b. Used Property. ~~For each taxpayer, the QIE shall be limited to one hundred fifty thousand dollars (\$150,000) in the cost of all qualifying used property in any one (1) year. See~~ The QIE for used property placed in service during a taxable year for income tax purposes shall be limited. For each taxpayer, the QIE shall be the lesser of the QIE cost or the current year's market value in accordance with the following procedure: ()

i. QIE cost shall be determined for each item of used property upon which the QIE is claimed. QIE cost is the lesser of an item's cost or one hundred fifty thousand dollars (\$150,000); provided, however, that the QIE cost for all elected used property shall not exceed one hundred fifty thousand dollars (\$150,000) in a taxable year (See Example B in Subparagraph 988.11.c.ii., of this rule). In the event the cost of one (1) or more items of used property exceeds one hundred fifty thousand dollars (\$150,000), QIE cost shall reflect the reduction necessary to stay within the one hundred fifty thousand dollar (\$150,000) limit (See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719 for information on the selection of items of used property). ()

ii. For each item purchased used, the QIE shall be limited to the lesser of the QIE cost or the current year's market value (See Example B in Subparagraph 988.11.c.ii., of this rule). ()

c. Examples. In the following examples, ~~which assumes that each~~ all of the property is owned by ~~one (1)~~ the same taxpayer and is a qualified investment. (3-20-04)()

i. Example A. In Example A, 2004 is the first year during which the qualified investment receives the QIE. The taxpayer may decide which of the used items placed in service in 2003 is considered first for the exemption. In this example, computer 1 has been given the exemption first. Since the limitation is based on cost, the remaining used property exemption cannot exceed one hundred thirty thousand dollars (\$130,000) and the QIE cost is determined accordingly. The conveyor belt is a new investment, first eligible for the QIE in 2005. In 2006, the assembly line, computer 1, and computer 2 would be fully taxable at the market value as of

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Example A										
Property Description (same taxpayer)	Year Placed in Service	Cost	New or Used	QIE Cost	Year 1 2004 Market Value	Year 1 2004 Exempt Value	Year 1 2004 Taxable Value	2005 Market Value	2005 Exempt Value	2005 Taxable Value
Assembly line Computer 1	2003	\$140,000 \$20,000	Used	\$20,000	\$140,000 \$12,000	\$140,000 \$12,000	\$0	\$8,000	\$8,000	\$0
Computer 1 Assembly line	2003	\$40,000 \$160,000	Used	\$130,000	\$140,000	\$130,000	\$30,000 \$10,000	\$110,000	\$110,000	\$0
Computer 2	2003	\$50,000	New	N/A	\$50,000 \$40,000	\$50,000 \$40,000	\$0	\$30,000	\$30,000	\$0
Conveyor belt	2004	\$200,000	Used	\$150,000	N/A	N/A	N/A	\$200,000	\$150,000	\$50,000

In this example, "year 1" is the first year during which the qualified investment receives the QIE.
(3-20-04)()

ii. Example B. In Example B, the property was purchased at auction for a cost much less than its market value.

Example B										
Property Description	Year Placed in Service	Cost	New or Used	QIE Cost	2006 Market Value	2006 Exempt Value	2006 Taxable Value	2007 Market Value	2007 Exempt Value	2007 Taxable Value
Construction Equipment	2005	\$20,000	Used	\$20,000	\$80,000	\$20,000	\$60,000	\$70,000	\$20,000	\$50,000

d. Used Property Placed in Service by Fiscal Year Taxpayer. If a taxpayer had a fiscal year beginning July 1, 2004, and placed one hundred fifty thousand dollars (\$150,000) of qualifying used property in service on May 15, 2004, and an additional one hundred fifty thousand dollars (\$150,000) of qualifying used property in service on August 1, 2004, the taxpayer would qualify for an exemption of up to three hundred thousand dollars (\$300,000) on this used property in 2005 and 2006. The exempt value in the second year of the exemption could not exceed the lesser of three hundred thousand dollars (\$300,000) or the (depreciated) market value of this used property.
()

12. Multi-County Taxpayers. (3-20-04)

a. Except taxpayers electing QIE for property that is State Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased new must indicate on Form 49E the county where each property is located or must complete a separate Form 49E and attach it to the personal property declaration submitted to each county. (3-20-04)

b. Except taxpayers electing QIE for property that is State Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased used must attach any

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Form 49E listing property purchased used to the personal property declaration sent to each county. A Form 49E listing only property purchased used may be provided to comply with this requirement. (3-20-04)

c. Any taxpayers electing QIE for property that is State Tax Commission assessed nonregulated operating property and purchased new or used must indicate on Form 49E each county where each property is located and attach it to the operator's statement. ~~(3-20-04)~~()

d. If multiple Form 49Es are submitted to one (1) or more assessors, a copy of each Form 49E must be attached to the correct year's income tax return. (3-20-04)

13. Special Provisions for Nonregulated Operating Property. ~~(3-20-04)~~()

a. For nonregulated operating property, the market value of the QIE is calculated by multiplying the depreciated original cost of the property times the ratio of the correlated value determined under Subsection 405.08 of these rules to the cost approach value determined under Subsection 405.02 of these rules. ~~(3-20-04)~~()

b. The following special provisions apply for the reduction in market value of nonregulated operating property resulting from QIE being elected. ~~(3-20-04)~~()

i. Reduction in Idaho value. For nonregulated operating property except situs property ~~and operating property owned by electric distribution, generation, and transmission companies~~, the reduction in market value will be made by subtracting the market value of the QIE from the allocated Idaho value before apportionment to any taxing district or unit. ~~(3-20-04)~~()

ii. ~~Reduction in market value of operating property owned by electric distribution, generation, and transmission companies. For operating property owned by electric distribution, generation, and transmission companies, the reduction in market value will be made by subtracting the market value of the QIE from the calculated market value by county before apportionment to any taxing district or unit within that county.~~ ~~(3-20-04)~~

iii. Reduction in market value of situs property owned by nonregulated operating property companies. For situs property owned by nonregulated operating property companies, the reduction in market value will be made by subtracting the market value of the specific investment in the specific location. ~~(3-20-04)~~()

14. Denial of QIE. If the QIE is denied for all or part of the market value of any item for which the QIE had been claimed, the assessor shall notify the taxpayer electing the QIE and shall identify the basis for the denial. (3-20-04)

15. Public Records and Exemption of Certain QIE Information from Disclosure. Public records are presumed to be open to the public. Records containing certain information pertaining to private businesses (such as trade secrets and other proprietary information) may be exempt from public disclosure (See Section 9-340D, Idaho Code) and may be protected from disclosure by the Idaho Trade Secrets Act, Chapter 8, Title 48, Idaho Code, and other laws. A taxpayer who submits information to the State Tax Commission or to a county assessor or Board of Equalization in accordance with this rule may designate all or part of the information as

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confidential. The designation must be made in writing and clearly identify the particular information deemed confidential. In addition, the front page of the submission must prominently state that the document contains information designated as confidential. The State Tax Commission, the county assessor and Board of Equalization shall treat the designated information as confidential, exempt from disclosure under Section 9-340D, Idaho Code and as subject to the Idaho Trade Secrets Act (see Chapter 8, Title 48, Idaho Code). Nothing in this paragraph limits exchanges of information between or among the State Tax Commission and county officials otherwise authorized by law. (3-20-04)

16. Cross Reference. For more information relating to procedures and requirements for QIE, refer to Section 63-3029B, Idaho Code, ~~and IDAPA 35.02.01, "Tax Commission Administrative and Enforcement Rules," Rule 450,~~ and IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719. For information relating to recapture of QIE, refer to Rule 989 of these rules. (3-20-04)()

989. ~~(RESERVED)~~ QUALIFIED INVESTMENT EXEMPTION (QIE) RECAPTURE (RULE 989).
Section 63-3029B, Idaho Code. ()

01. In General. If a taxpayer has elected the property tax exemption (also know as the QIE) allowed by Section 63-3029B, Idaho Code, for property sold or otherwise disposed of prior to being held five (5) full years, or property that ceases to qualify or failed to originally qualify pursuant to Section 63-3029B, Idaho Code, the property tax benefit shall be subject to recapture. ()

02. Notification by Taxpayer That Property Ceases to Qualify. If an item on which a taxpayer claimed the QIE ceases to qualify during the recapture period or was incorrectly claimed by the taxpayer as qualified investment, the taxpayer shall provide notification of the amount owing and shall remit said amount to the State Tax Commission by the date by which the personal property declaration or operator's statement is due in the next calendar year. If no personal property declaration or operator's statement is required, the notification must be filed by the following March 15. Notification shall be accomplished by filing State Tax Commission Form 49ER. For each item of property, for each year in which the QIE was granted, the taxpayer shall include with such notification the following: ()

- a.** A description of the item that ceases to qualify. ()
- b.** The county where the item was located. ()
- c.** The date the item was placed in service. ()
- d.** The date the item was no longer qualified for the QIE. ()
- e.** The amount of value exempted from property tax each year, and ()
- f.** The amount of the property tax benefit recapture. ()

03. Notification in Case of Failure by Taxpayer to File Form 49ER. If any taxpayer

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who is required to file Form 49ER fails to do so by the date specified in Subsection 989.02 of this rule, the State Tax Commission shall issue a Notice of Deficiency in the manner provided in Section 63-3045, Idaho Code, to the taxpayer who claimed the QIE. The notice shall show the calculation of the recaptured property tax benefit. ()

04. Protest of Recapture. If a taxpayer does not agree with the Notice of Deficiency issued to assert the recapture, the taxpayer may file a protest with the State Tax Commission to request a redetermination of the deficiency. The protest shall meet the requirements as provided in Section 63-3045, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administrative and Enforcement Rules," Rule 320. ()

05. Property Tax Benefit Subject to Recapture. For any item determined to be subject to the recapture of the property tax benefit under Section 63-3029B(4)(d), Idaho Code, the taxpayer shall multiply the exempt value of the property by the applicable average property tax levy determined by the State Tax Commission under Subsection 989.06 or 989.07 of this rule. The result of this calculation shall be multiplied by the recapture percentage found in the following table.

Table for Reduction of Property Tax Benefit Subject to Recapture	
Time Held/Time Qualifying	Recapture Percentage
Less than or equal to one (1) year	100%
More than one (1) year but less than or equal to two (2) years	80%
More than two (2) years but less than or equal to three (3) years	60%
More than three (3) years but less than or equal to four (4) years	40%
More than four (4) years but less than or equal to five (5) years	20%

The taxpayer shall report this calculation on Form 49ER and shall submit this form and remit the amount calculated to the State Tax Commission no later than the date indicated in Section 989.02 of this rule. ()

06. County Average Property Tax Levy -- Locally Assessed Property Located in One County or Nonapportioned Centrally Assessed Property. For locally assessed property located in one (1) county or nonapportioned centrally assessed property, the State Tax Commission shall compute and report the county average property tax levy according to the following procedure. ()

a. Property Tax Budget Summation. For each year, sum the property tax portion of the annual budget of each taxing district wholly located within the county for which the average levy is to be calculated. This is the approved amount found on the taxing district's L-2 Form in the column entitled "Balance to be levied" as described in Rule 803 of these rules. To this amount, add the prorated portion of the approved "Balance to be levied" for any taxing district located partially within the county for which the average levy is to be calculated. The prorated portion is determined by multiplying the levy for the taxing district by the taxable value (as defined in Section 63-803(4), Idaho Code) of the portion of the taxing district within the county for which the average levy is to be calculated. ()

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b. Average Property Tax Levy. The average property tax levy shall be computed by dividing the total of the property tax budgets computed in Paragraph 989.06.a., of this rule by the taxable value (as defined in Section 63-803(4), Idaho Code) of the county for which the average levy is to be calculated. ()

c. Notice to Each County Auditor. The State Tax Commission will notify each county auditor of the county's current year's average property tax levy no later than the first Monday in December each year. ()

07. Statewide Average Property Tax Levy -- Locally Assessed Property Located in More Than One County or Apportioned Centrally Assessed Property. For locally assessed property located in more than one (1) county or apportioned centrally assessed property, the State Tax Commission shall determine the average urban property tax levy of the state and shall notify each county auditor of said average no later than the first Monday in December each year. ()

08. Noticing Remittance for the Recapture of the Property Tax Benefit. When the State Tax Commission remits to a county the property tax benefit recaptured under Section 63-3029B(4)(f), Idaho Code, it shall include with this remittance a notice identifying the following: ()

a. Owner. Name of the owner receiving the QIE; ()

b. Property Description. A description of the property that received the QIE; ()

c. First Year Value of QIE. The amount of exempt value in the first year the QIE was elected and an identification of the year; ()

d. Second Year Value of QIE. The amount of exempt value in the second year after the QIE was elected; ()

e. Tax Code Area Number. The number of the tax code area within which that item was located; and ()

f. Amount Remitted. The amount of money remitted for any item. ()

09. No Allocation of Remittances to Urban Renewal Agencies. Remittances received by a county for property tax benefits recaptured under Section 63-3029B(4)(f), Idaho Code, shall not be subject to allocation to urban renewal agencies. ()

10. Penalty and Interest. Penalty and interest shall be determined as provided in Sections 63-3045 and 63-3046, Idaho Code. Penalty and interest shall be computed from the due date found in Subsection 989.02 of this rule. ()

11. Cross Reference. For more information relating to QIE, refer to Section 63-3029B, Idaho Code, and Rule 988 of these rules. ()

990. CERTIFICATION OF THE TAX CHARGE ON FARM MACHINERY, TOOLS AND EQUIPMENT FOR REPLACEMENT FUND DISTRIBUTION (RULE 990).

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Sections ~~63-3067 and~~ 63-602EE and 63-3638, Idaho Code. ~~(3-15-02)()~~

01. Tax Charge Described. Tax charges to be certified are year 2000 property taxes levied against farm machinery, tools and equipment formerly categorized as Category 58. (3-15-02)

02. Category 58 Described. Rule 130 of these rules formerly described Category 58 as unlicensed farm or ranch machinery, shop tools, or equipment not assessed as real property. (3-15-02)

03. Cross Reference. Boards of county commissioners and county clerks need to refer to Rule 803 of these rules for special directions relating to certifying the year 2000 tax charge on farm machinery, tools and equipment to the State Tax Commission. ~~(3-15-02)()~~

991. -- 994. (RESERVED).

995. CERTIFICATION OF SALES TAX DISTRIBUTION (RULE 995).

Section 63-3638, Idaho Code. (5-3-03)

01. Most Current Census. Population shall be from the most current population census or estimate available from the Bureau of the Census during the quarter of the year for which any distribution of sales tax money is to be made. (3-24-94)

02. Market Value for Assessment Purposes. Market value for assessment purposes shall mean the market value certified to the State Tax Commission pursuant to Section 63-510, Idaho Code, and shall include homeowner's exemptions, and the amount of real and personal property value which exceeds the assessed value shown on the base assessment roll for a revenue allocation area as defined in Section 50-2903(12), Idaho Code, for the calendar year immediately preceding the current fiscal year. (5-3-03)

03. Current Fiscal Year. For the purposes of this section, current fiscal year shall mean the current fiscal year of the state of Idaho. For distribution purposes, the current fiscal year shall begin with the distribution made in October, following collection of sales taxes in July, August, and September. (3-30-01)

04. Incorporated City. Incorporated city shall, for the current fiscal year, have a duly elected mayor and city council, and be recognized by the Bureau of the Census, U.S. Department of Commerce, for the distribution of federal general revenue sharing monies. (3-24-94)

05. Population and Valuation Estimates. Population and valuation estimates for distribution of revenue sharing monies shall be updated at least annually. Updated estimates shall be used beginning with the October distribution. (3-24-94)

06. Determination Date and Eligibility. The eligibility of each city for revenue sharing monies pursuant to Section 63-3638(89)(a), Idaho Code, shall be determined as of July 1 of the current year. Cities formed after January 1, 2001, shall also be entitled to a share of the money pursuant to the provisions of Section 63-3638(89)(c), Idaho Code. ~~(3-30-01)()~~

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07. Quarterly Certification. The State Tax Commission shall certify quarterly to each county clerk the base and excess shares of the distributions required pursuant to Section 63-3638(89)(c) and 63-3638(89)(d), Idaho Code, and the distributions to cities and counties required pursuant to Section 63-3638(89)(a) and 63-3638(89)(b), Idaho Code. Each county clerk shall calculate and certify the distribution of these monies to the eligible taxing districts based on the directives of the State Tax Commission. ~~The clerk shall prepare and transmit to the county treasurer and the State Tax Commission copies of a single auditor's certificate showing the total combined certification for base and excess distributions no later than the second Monday of the month following distribution of the revenue from the State Tax Commission.~~ (5-3-03)(____)

a. City and County Base Shares. For cities and counties, the initial base share shall be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. In addition, the initial base share shall be adjusted proportionally to reflect increases that become available or decreases that occur, unless increases exceed five percent (5%) of the initial base share. (3-30-01)

b. Special Purpose Taxing District Base Shares. For special purpose taxing districts the initial base share shall be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. Special purpose taxing district initial base shares shall be proportionally reduced to reflect decreases in the amount of sales tax available to be distributed. (3-30-01)

c. Excess Shares. Excess shares shall be any amounts above the base share that any city, county or special purpose taxing district is entitled to receive pursuant to Section 63-3638(89)(c) or 63-3638(89)(d), Idaho Code. These amounts shall not be subject to redistribution provisions of Section 40-801, Idaho Code. (3-30-01)(____)

d. Shares Pursuant to Section 63-3638(89)(a) or 63-3638(89)(b), Idaho Code. Shares to be distributed pursuant to Section 63-3638(89)(a) or 63-3638(89)(b), Idaho Code, shall be termed "revenue sharing". Such shares shall be subject to quarterly distribution and for this purpose, the one million three hundred twenty thousand dollars (\$1,320,000) distribution pursuant to Section 63-3638(89)(b)(i), Idaho Code, shall be considered an annual amount and shall be divided into four (4) equal shares. (3-30-01)(____)

08. Notification of Value. The county auditor shall notify the State Tax Commission of the value of each taxing district and unit as specified in Section 63-510, Idaho Code. (3-30-01)

09. Corrections. (3-30-01)

a. When distributions have been made erroneously, corrections shall be made to the following quarterly distribution(s) so as to provide the quickest practicable restitution to affected taxing districts. Corrections shall be made to reconcile erroneous distributions made for the current fiscal year. Errors made in distributions ~~made~~ for the last quarter of the current fiscal year shall be corrected as soon as practicable in distributions made for the following fiscal year. (3-30-01)(____)

House Revenue and Taxation Committee

STATE TAX COMMISSION
Property Tax Administrative Rules

Docket No. 35-0103-0401
PENDING RULE

b. The State Tax Commission shall notify affected county clerks when the State Tax Commission becomes aware of an error in the distribution of the base or excess shares. (3-30-01)

c. The State Tax Commission shall notify affected cities or county clerks when the State Tax Commission becomes aware of an error in the distribution of city or county revenue sharing monies. (3-30-01)

House Revenue and Taxation Committee

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0402

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes between the text of the proposed rule and text of the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 6, 2004, Idaho Administrative Bulletin, Vol. 04-10, pages 574 through 576.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 17th day of November, 2004.

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

House Revenue and Taxation Committee

STATE TAX COMMISSION
Property Tax Administrative Rules**Docket No. 35-0103-0402**
PENDING RULE

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 635 is being amended to be consistent with a recent district court ruling by changing the definition of “previously eligible” to recognize eligibility at any time since 1981 and by deleting the definition of “continued to be eligible”. To make technical corrections.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: A temporary/proposed rule change is needed for Rule 635 due to a district court ruling.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being adopted as a temporary/proposed rule and the time constraints require having the schedule available to reflect the new rate.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 25th day of August, 2004.

Alan Dornfest
Tax Policy Supervisor
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

635. PARTIAL EXEMPTION FOR PARCELS OF LAND IN A RURAL HOMESITE DEVELOPMENT PLAT (RULE 635).

Section 63-602FF, Idaho Code. (5-3-03)

01. Definitions. For the purpose of implementing the partial exemption under Section 63-602FF, Idaho Code, beginning with assessments for 2002, the following terms are defined. (5-3-03)

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PENDING RULE

a. “Speculative Homesite Exemption.” “Speculative homesite exemption” means an exemption granted under Section 63-602FF, Idaho Code. (5-3-03)

b. “Previously Eligible.” Parcels of land in a rural homesite development plat are “previously eligible” for the exemption provided in Section 63-602K, Idaho Code, provided the land was eligible for an exemption on the speculative portion of value of agricultural land ~~on January 1 of the year immediately preceding the year for which eligibility for the speculative homesite exemption is first determined~~ at any time since the enactment of that exemption in 1981. (5-3-03)(8-1-04)T

~~**c.** “Continue to be eligible.” “Continue to be eligible” means the parcel must have been eligible for the speculative value exemption on January 1 of the year immediately preceding the year for which eligibility for the speculative home site exemption is to be determined. Continue to be eligible also means once granted, the speculative home site exemption will be granted each year the property meets each of the qualifying criteria stated in Subsections 635.02.a., through 635.02.e., 635.02.e., and 635.02.f., of this rule.~~ (5-3-03)

~~**d.**~~ **c.** “Improvements are Being Built.” “Improvements are being built” or “construction of the improvements has begun” means construction of any structure has commenced or is observable on the land. Construction of improvements does not include construction of any fences or “associated site improvements”, as defined in Rule 645 of these rules. (5-3-03)

02. Qualifying Criteria for the Speculative Homesite Exemption. To qualify for the speculative homesite exemption, any parcel of land must meet each of the following criteria. (5-3-03)

a. The county where the parcel of land is located is less than one hundred thousand (100,000) in population. (5-3-03)

b. The parcel of land is in a recorded subdivision plat. (5-3-03)

c. The parcel of land is rural; that is, not within the boundaries of an incorporated city. (5-3-03)

d. The parcel of land was “previously eligible” for the speculative agricultural value exemption under Section 63-602K, Idaho Code. (5-3-03)

e. The parcel of land is not eligible for the speculative agricultural value exemption under Section 63-602K, Idaho Code, for the current year’s assessment. (5-3-03)

f. No improvements, as defined in ~~Subsection~~ Paragraph 635.01.~~d.~~, of this rule are being or have been built upon the parcel of land. (5-3-03)(8-1-04)T

03. Nonqualifying Parcels in Subdivisions. (5-3-03)

a. Any parcel never eligible for the exemption provided in Section 63-602K, Idaho Code, shall not be qualified for the speculative homesite exemption. (5-3-03)

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STATE TAX COMMISSION
Property Tax Administrative Rules**Docket No. 35-0103-0402**
PENDING RULE

b. Any rural subdivision parcel designated as timberland under Chapter 17, Title 63, Idaho Code, shall not be qualified for the speculative homesite exemption. (5-3-03)

04. Calculation of Taxable Value of Land Eligible for the Speculative Homesite Exemption. The taxable value of land eligible for the speculative homesite exemption shall be calculated based on the prior use qualifying the parcel for the exemption provided in Section 63-602K, Idaho Code; that is, the taxable value per acre of this land shall be equal to the taxable value per acre of qualifying agricultural land in the same use as this land when it previously qualified for the speculative agricultural value exemption. Any additional value for the “associated site improvements,” as defined in Rule 645 of these rules, is part of the value exempt under the speculative homesite exemption and is not included in the taxable value of the land as calculated pursuant to Section 63-602K, Idaho Code. (5-3-03)

05. Use of Category. The county assessor shall use the category identified in Rule 130 of these rules for all parcels of land qualifying for the speculative homesite exemption. (5-3-03)

06. Report of Exempt Value. As provided in Rule 509 of these rules, the county auditor shall report to the State Tax Commission the total exempt value of all parcels of land qualifying for the speculative homesite exemption. (5-3-03)

07. Removal of the Speculative Homesite Exemption. (5-3-03)

a. The year following the year in which the population of a county exceeds one hundred thousand (100,000), the speculative homesite exemption shall be removed from any parcels of land previously qualifying for the speculative homesite exemption in that county. Population shall be determined from the most current census or estimate available from the Bureau of the Census as of January 1 of each year. (5-3-03)

b. The year following the year in which any parcel is annexed into an incorporated city or is incorporated into a newly incorporating city, the speculative homesite exemption shall be removed from that parcel. (5-3-03)

c. The speculative homesite exemption shall be removed from any parcel of land when “improvements are being built”. The speculative homesite exemption must not be removed until “improvements are being built” upon the parcel, even if, the ownership of a parcel of land has been transferred. (5-3-03)

House Revenue and Taxation Committee

IDAPA 35 - STATE TAX COMMISSION

35.01.06 - HOTEL/MOTEL ROOM AND CAMPGROUND SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0106-0401

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes between the text of the proposed rule and text of the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 1, 2004, Idaho Administrative Bulletin, Vol. 04-9, pages 215 and 216.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact James Husted, at (208) 334-7530.

DATED this 17th day of November, 2004.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2004.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

House Revenue and Taxation Committee

STATE TAX COMMISSION
Hotel/Motel Room & Campground Sales Tax Rules**Docket No. 35-0106-0401**
PENDING RULE

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 010 - The term “travel and convention” is used several times in the hotel/motel room and campground sales tax rules, yet the term is undefined. The amendment will state that the “travel and convention tax” is the tax imposed by Section 67-4718, Idaho Code.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2004.

DATED this 28th day of July, 2004.

Jim Husted, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. DEFINITIONS (RULE 010).

01. Campground Defined. Campground means a person, partnership, trustee, receiver, or other association, regularly engaged in the business of renting, for a consideration, or which holds itself out as being in the business of renting, for a consideration, any area, space or place for camping, parking campers, travel trailers, motor homes or tents when such areas, spaces or places are to be rented for the purpose of providing an individual or individuals a place to sleep. (7-1-93)

02. Hotel or Motel Defined. The words hotel or motel means any person, partnership, corporation, trustee, receiver, or other association, regularly engaged in the business of furnishing rooms for use or occupancy, whether personal or commercial, in return for a consideration or which holds itself out as being regularly engaged in such business. (7-1-93)

a. Furnishing rooms for a consideration includes rooms provided for personal

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Hotel/Motel Room & Campground Sales Tax Rules**Docket No. 35-0106-0401**
PENDING RULE

occupancy and rooms provided for meeting, convention, or other commercial purposes. (7-1-93)

b. The rental of condominiums or townhouses is subject to tax unless exempted under the provisions of ~~ISTC~~ Rule 016 of these rules. The rental of rooms by a public or private educational institution is subject to tax, unless exempted under the provisions of ~~ISTC~~ Rule 016 of these rules. The rental of rooms by hospitals, nursing homes, or similar institutions to nonpatients is subject to tax, unless exempted under the provisions of ~~ISTC~~ Rule 016 of these rules.

(~~7-1-93~~)()

03. Travel and Convention Tax Defined. Travel and convention tax means the tax imposed by Section 67-4718, Idaho Code. ()

House Revenue and Taxation Committee

IDAPA 35 - STATE TAX COMMISSION

35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-0401

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes between the text of the proposed rule and text of the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 1, 2004, Idaho Administrative Bulletin, Vol. 04-9, pages 217 and 218.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact James Husted, at (208) 334-7530.

DATED this 17th day of November, 2004.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3624, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2004.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

House Revenue and Taxation Committee

STATE TAX COMMISSION
Cigarette & Tobacco Products Tax Rules

Docket No. 35-0110-0401
PENDING RULE

Rule 016 – Cigarette distributor’s are not allowed to sell cigarettes made by manufacturers not listed on the Attorney General’s directory pursuant to Section 39-8403, Idaho Code. The amended rule will allow cigarette distributors to claim a credit for cigarettes purchased from manufacturers that were recently removed from the directory, if the manufacturer was listed at the time the cigarettes were purchased. Also, the rule will specify that credits shall be reduced by the stamper’s allowance provided for by Section 63-2509, Idaho Code.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2004.

DATED this 28th day of July, 2004.

Jim Husted, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

016. WHOLESALE'S CREDIT CLAIMS FOR UNMARKETABLE STAMPS (RULE 016).

01. Destroyed Stamps. On and after July 1, 1989, stamps destroyed by the manufacturer as a result of the return of stale or otherwise ~~unsalable~~ unmarketable cigarettes may be redeemed by the wholesaler for credit against future tax due if: (7-1-93)()

a. The manufacturer provides an affidavit to the Commission indicating that said stamped cigarettes were received from an Idaho licensed wholesaler and detailing the number and package type received. (7-1-93)

b. The wholesaler provides to the Commission a returned goods receipt obtained from the manufacturer’s representative verifying the number of packages, the package type, and the date the cigarettes were returned and a bill of lading traceable to the returned goods receipt.

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STATE TAX COMMISSION Cigarette & Tobacco Products Tax Rules

Docket No. 35-0110-0401
PENDING RULE

The credit must be claimed on the wholesaler's cigarette tax return and all required documentation must be attached. (7-1-93)

02. Stale and ~~Unsalable~~ Unmarketable Cigarettes. When stamps are to be destroyed by a wholesaler as a result of stale or otherwise ~~unsalable~~ unmarketable cigarettes that cannot be returned to the manufacturer, a credit will be allowed against future tax only if: ~~(7-1-93)~~()

a. The wholesaler notifies the Commission in writing at least ten (10) working days prior to destruction. The notice must include a complete description of the number of packages, the package type, and the time and manner the cigarettes and stamps will be destroyed. (7-1-93)

b. The Commission reserves the right to observe the destruction of all cigarette stamps and further reserves the right to delay the destruction until such time as a mutual appointment can be arranged for witnessing such destruction. (7-1-93)

03. Unused, Unfit or Damaged Stamps. Stamps that are unused, unfit, or damaged may be returned to the Commission by the wholesaler for credit. (7-1-93)

04. Manufacturers Removed From Directory. It is unlawful for a wholesaler to affix stamps to a package of cigarettes manufactured by a manufacturer or belonging to a brand family not included in the directory of certified manufacturers and brands published by the Idaho Attorney General. See Section 39-8403, Idaho Code. It is possible for a wholesaler to affix stamps to cigarettes manufactured by a manufacturer that is later removed from the directory. The cigarettes would then become unmarketable. In such a case a wholesaler may apply for a credit by following the procedures described in Subsection 016.02 of this rule. No credit will be allowed if the cigarettes are purchased after the manufacturer or brand family has been removed from the directory. ()

05. Credits and Refund. All credits and refunds of cigarette tax will be reduced by the amount of the compensation provided for by Section 63-2509, Idaho Code. ()

House Revenue and Taxation Committee

IDAPA 35 - STATE TAX COMMISSION

35.01.11 - IDAHO UNCLAIMED PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0111-0401

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes between the text of the proposed rule and text of the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 1, 2004, Idaho Administrative Bulletin, Vol. 04-9, pages 219 and 220.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact James Husted, at (208) 334-7530.

DATED this 17th day of November, 2004.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 14-539, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2004.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and

House Revenue and Taxation Committee

STATE TAX COMMISSION
Unclaimed Property Tax Rules**Docket No. 35-0111-0401**
PENDING RULE

purpose of the proposed rulemaking:

Rule 021 - The Unclaimed Property rules do not provide any details on the necessary documentation required by the heirs of a deceased person to establish that the heirs have a right to claim the property pursuant to Section 14-524, Idaho Code. The proposed new rule will clarify the necessary documentation for an heir to make such a claim.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2004.

DATED this 28th day of July, 2004.

Jim Husted, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

021. PROPERTY HELD FOR DECEASED OWNERS (RULE 021).

If the listed owner is deceased, the claimant must provide a copy of the death certificate. Other required documentation includes, but is not limited to: ()

01. Property Valued at Five Thousand Dollars or More. For property valued at five thousand dollars (\$5,000) or more, a certified copy of letters of administration or letters testamentary naming claimant as the personal representative of the listed owner, or a certified copy of the decree of distribution of the estate of the listed owner, determining claimant's entitlement to receive unclaimed property. If a court did not order the distribution of the estate, the administrator will consider other documentation provided it is sufficient to establish the identity of the claimant as the rightful heir of the owner. ()

02. Property Valued at Less than Five Thousand Dollars. For property valued at less than five thousand dollars (\$5,000), a signed affidavit executed by the claimant, stating that:

House Revenue and Taxation Committee

STATE TAX COMMISSION
Unclaimed Property Tax Rules

Docket No. 35-0111-0401
PENDING RULE

()

a. The claimant is entitled to receive unclaimed property; ()

b. The reason for entitlement to such property; i.e., the exact relationship with the listed owner and the basis of the entitlement; ()

c. That there has been no probate of the estate of the deceased owner; ()

d. That no such probate is contemplated; and ()

e. That claimant will indemnify the state for any loss, including attorney fees, should another claimant assert a prior right to the property. ()

0242. -- 999. (RESERVED).

House Revenue and Taxation Committee

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-0401

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes between the text of the proposed rule and text of the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 6, 2004, Idaho Administrative Bulletin, Vol. 04-10, pages 587 through 591.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Janice Boyd, at (208) 334-7530.

DATED this 17th day of November, 2004.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and

House Revenue and Taxation Committee

STATE TAX COMMISSION
Tax Commission Administration & Enforcement Rules**Docket No. 35-0201-0401**
PENDING RULE

purpose of the proposed rulemaking:

Rule 010: Amend Administration and Enforcement Rule 010 to include information related to the filing of returns, other documents, or payments with the Tax Commission by a qualified private delivery service in response to 2004 legislative changes in HB 478.

Rule 210: Amend Administration and Enforcement Rule 210 to replace obsolete references to the office of the county recorder with the Secretary of State. Correct information regarding the extension of a lien.

Rule 310: Section 63-3045, Idaho Code, establishes a formula for calculating the yearly interest rate applied to deficiencies of tax and refunds. The rates are published in Administration and Enforcement Rule 310. Amend Administration and Enforcement Rule 310 to add the interest rate for calendar year 2005.

Rule 450: HB 799, passed by the 2004 Legislature, amended Section 63-3029B, Idaho Code, to change the penalty related to the property tax exemption in lieu of earning the investment tax credit to a recapture of the property tax benefit, when property fails to qualify for the entire five-year recapture period. Since the penalty is no longer applicable, repeal Administration and Enforcement Rule 450.

Rule 704: Amend Administration and Enforcement Rule 704 to include the Board of County Commissioners and County Treasurers as officials the Tax Commission can exchange information with related to a claim for the homeowner's exemption, in response to 2004 legislative changes in HB 739.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 24th day of August, 2004.

Janice Boyd, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

House Revenue and Taxation Committee

STATE TAX COMMISSION
Tax Commission Administration & Enforcement Rules

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PENDING RULE

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. DEFINITIONS (RULE 010).

Section 63-3003, Idaho Code.

(3-20-97)

01. Date of Filing or Payment.

~~(3-15-02)~~()

a. When returns or other documents or payments are delivered to the Tax Commission by United States mail~~ed~~, the date of filing or payment means the date shown by the post office cancellation mark. If a cancellation mark is omitted, illegible or erroneous, the document will be deemed filed on the date the taxpayer establishes by competent evidence that the material was deposited with the United States Postal Service. A postage meter cancellation shall not be deemed a post office cancellation mark. Refer to Section 63-217, Idaho Code.

~~(3-15-02)~~()

b. When returns or other documents or payments are delivered to the Tax Commission by a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, the date of filing or payment means the date treated as the postmark date for purposes of Section 7502, Internal Revenue Code, as provided by the special rules in Notice 97-26, 1997-1 C.B. 413 and subsequent Notices.

()

c. Materials not mailed with the United States Postal Service or a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, are filed when physically received by the Tax Commission.

~~(3-15-02)~~()

d. Returns or other documents or payments transmitted electronically are deemed received or paid on the date provided in Section 63-115, Idaho Code.

()

02. Pay, Paid, Payable or Payment. When used in reference to an amount of tax, penalty, interest, fee or other amount of money due to the Tax Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the Tax Commission of lawful money of the United States. As used herein, lawful money of the United States means currency or coin of the United States at face value and negotiable checks that are payable in money of the United States. Acceptance by the Tax Commission of a check that is subsequently dishonored by the bank on which it is drawn does not constitute payment. Nothing herein shall limit the authority of the Tax Commission to refuse to accept a check drawn on the account of a taxpayer who has previously tendered a check dishonored by the bank on which it was drawn.

(3-20-97)

03. Return or Tax Return. Return and tax return mean a form or other document that an individual, corporation or other legal entity reports information, including information necessary to calculate taxes due to the Tax Commission or another governmental agency that requires a return be filed. See Rule 150 of these rules for the requirements of a valid tax return.

(3-20-97)

04. Tax Commission. Tax Commission means the Idaho State Tax Commission established by Article VII, Section 12 of the Idaho Constitution and referred to in Sections 63-101 and 63-3038, Idaho Code.

(3-20-97)

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05. These Rules. The term these rules refers to IDAPA 35.02.01, relating to the administration and enforcement of taxes. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

210. PROPERTY SUBJECT TO LIEN (RULE 210).

Section 63-3051, Idaho Code.

(3-20-97)

01. Statutory Lien. A statutory lien is created when demand for payment of any assessed deficiency in tax, interest, penalties, or other charges is made and the taxpayer fails to pay the assessment. The lien extends to all real and personal property, or rights therein, owned or acquired by the taxpayer from the date the lien is created until the time it expires. The lien is deemed to be created on the date demand for payment is made. The lien is not effective as to third-parties until a notice of lien is filed. (3-20-97)

02. Duration of Lien. A notice of lien remains in effect for five (5) years from the date the lien notice is first filed in the ~~county recorder's~~ Secretary of State's office ~~where the taxpayer may have property.~~ The lien may be extended by filing ~~another notice of an amendment to continue the~~ tax lien with the ~~proper county~~ office of the Secretary of State within that period. The lien, as extended, is valid and applies against only the real property of the taxpayer.

(3-20-97)()

(BREAK IN CONTINUITY OF SECTIONS)

310. INTEREST RATES (RULE 310).

Sections 63-3045 and 63-3073, Idaho Code.

(3-20-04)

01. In General. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code.

(3-20-04)()

02. Idaho Interest Rates and Applicable Revenue Rulings.

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable

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PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
<u>Calendar Year 2005</u>	<u>6% simple interest</u>	<u>Revenue Ruling 2004-69</u>

(3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

~~431. — 449. (RESERVED).~~

~~**450. PROPERTY TAX EXEMPTION PENALTY (RULE 450).**~~

~~Section 63-3029B, Idaho Code.~~

(3-20-04)

~~**01. In General.** If a taxpayer is electing or has elected the property tax exemption allowed by Section 63-3029B, Idaho Code, for property sold or otherwise disposed of, or that ceases to qualify or failed to originally qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a penalty shall be computed by the Tax Commission. See IDAPA 35.01.03, "Property Tax Administrative Rules," Rule 988, for information related to the election of qualified property for exemption. See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719, for information related to the requirement that the taxpayer had negative Idaho taxable income in the second preceding taxable year from the taxable year in which the qualified property was placed in service.~~

(3-20-04)

~~**02. Calculation Of Penalty.** A penalty of two (2) times the average urban property tax levy of the state of Idaho as calculated by the Tax Commission shall be multiplied by the claimed investment. For purposes of computing the penalty:~~

(3-20-04)

~~**a.** Claimed investment shall be the value of the nonqualifying investment that would have been taxable for property tax purposes for the first year of the exemption if such exemption had not been allowed.~~

(3-20-04)

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~~b. Average urban property tax levy of the state shall be the levy computed as such by the Tax Commission for the first year for which property subject to the penalty was exempt.~~

~~(3-20-04)~~

~~03. Notification That Property Ceases To Qualify. If property on which a taxpayer claimed the property tax exemption ceases to qualify during the recapture period or was incorrectly claimed by the taxpayer as qualified investment, the taxpayer shall notify the Tax Commission in writing, of such information. The taxpayer shall provide a schedule that includes a description of each property that ceases to qualify, the county the property was located in, and the original cost for the property.~~

~~(3-20-04)~~

~~04. Notification Of Penalty Amount By Tax Commission. Upon receiving information that property on which the property tax exemption was claimed was sold or otherwise disposed of, or that ceases to qualify or failed to originally qualify during the recapture period, the Tax Commission shall issue a Notice of Deficiency in the manner provided in Section 63-3045, Idaho Code, to the owner of the nonqualifying property.~~

~~(3-20-04)~~

~~05. Protest Of Penalty. If a taxpayer does not agree with the Notice of Deficiency issued to assert the penalty, the taxpayer may file a protest with the Tax Commission to request a redetermination of the deficiency. The protest shall meet the requirements as provided in Section 63-3045, Idaho Code, and Rule 320 of these rules.~~

~~(3-20-04)~~

4531. -- 499. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

704. DISCLOSURE OF INFORMATION -- GOVERNMENT AGENCIES AND OFFICIALS. (RULE 704).

Sections 39-8405, 50-1049, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3634A, and 67-4917C, Idaho Code.

~~(3-20-04)()~~

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee.

(3-20-97)

02. Government Agencies or Officials. The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code.

(3-20-97)

03. Exchange of Information. Information may be exchanged between the Tax

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Commission and: (4-5-00)

- a. The Internal Revenue Service, as allowed by Section 63-3077(1)(a), Idaho Code; (5-3-03)
- b. Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)
- c. County assessors, limited to: (3-20-04)
 - i. Information relating to the taxpayer's residence or domicile; and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and ~~(3-20-04)~~(____)
 - ii. Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)
- d. Department of Commerce and Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)
- e. Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)
- f. Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)
- g. Idaho Transportation Department, relating to: (3-20-04)
 - i. Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)
 - ii. Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)
- h. Financial Management Services of the U. S. Department of the Treasury, as allowed by Section 63-3077(1)(a), Idaho Code; (5-3-03)
- i. Governing entity of the International Fuels Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; ~~(5-3-03)~~(____)
- j. Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, Section 63-3077C, Idaho Code; (5-3-03)
- k. Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
- l. Resort cities, as allowed by Section 50-1049, Idaho Code; ~~and~~ ~~(5-3-03)~~(____)
- m. Auditorium districts, as allowed by Section 67-4917C, Idaho Code; ~~and~~ ~~(5-3-03)~~(____)
- n. County treasurers and boards of county commissioners, limited to information

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related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G,
Idaho Code. ()

House Revenue and Taxation Committee

IDAPA 36 - BOARD OF TAX APPEALS

36.01.01 - IDAHO BOARD OF TAX APPEALS RULES

DOCKET NO. 36-0101-0401

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 63-3808, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 6, 2004, Idaho Administrative Bulletin, Vol. 04-10, pages 592 through 614.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Susan Renfro at 208/334-3354.

DATED this 10th day of November, 2004.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-3808 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and

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purpose of the proposed rulemaking;

The proposed rules incorporate, as appropriate, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," into the Board of Tax Appeals Administrative Rules. The Board of Tax Appeal Administrative Rules will now supersede IDAPA 04.11.01, with the exception of rules 800 through 860 (Rulemaking).

There are two additional changes:

Rule 030 no longer allows third party non attorney representation before the Board through a Board approved power of attorney. The Attorney General has advised the Board this rule conflicts with Idaho Code Sections 3-401 and 3-420, the unauthorized practice of law.

Rule 075, the discovery rule, limits the scope of discovery. The limitations will simplify the requests to engage in discovery and eliminate abuses or over-burdensome and intimidating requests, particularly for property tax appeals. Streamlining requests to engage in discovery will enhance development of the record, promote hearings without delay, and allow the Board to continue to meet its May 1 statutory decision deadline date.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Not applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the Board of Tax Appeals is already subject to the Attorney General's Rules of Administrative Procedure, and those rules are now being included in the Board of Tax Appeals Administrative Rules. Rule 030 is in conflict with a statute, therefore no negotiated rulemaking is required, and Rule 075 simplifies and eliminates abusive requests to engage in discovery.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Renfro at 208/334-3354.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this August 20, 2004.

Susan Renfro
Director and Clerk to the Board
Board of Tax Appeals
3380 Americana Terrace, Suite 110
P.O. Box 83720
Boise, ID 83720-0088
Phone 208/334-3354/Fax 208/334-4060

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

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004. (RESERVED).

025005. ORGANIZATION AND OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 5).

~~01. Office.~~ The principal office of the Board shall be at Boise, Idaho, and shall be open each day for the transaction of business; and filing of documents between the hours of 8:00 a.m. and 5:00 p.m., Saturdays, Sundays, and legal holidays excepted. The Board's mailing address, unless otherwise indicated, will be Idaho Board of Tax Appeals, P.O. Box 83720, Boise, Idaho, 83720-0088. The Board's street address is 3380 Americana Terrace Suite 110, Boise, Idaho, 83706. The Board's telephone number is 208-334-3354 and its FAX number is 208-334-4060.

(4-5-00)()

~~02. Chairman.~~ The Chairman of the Board shall serve as the administrative officer.

(4-5-00)

~~a. Election.~~ The Chairman shall be elected annually by the board members in consideration of experience with the Board and the member's availability to serve and support the Board's administrative duties.

(4-5-00)

~~b. Power.~~ The Chairman shall oversee the issuance of acknowledgment letters, notices of hearing, notices of show cause hearings, and is authorized to perform all other procedural duties such as issuing orders on nonsubstantive rulings without a formal meeting of the Board. The Chairman shall not issue any substantive orders in any case, except upon a roll call vote of the board members where a majority concurs in the result.

(4-5-00)

0046. PUBLIC RECORDS ACT COMPLIANCE (RULE 6).

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code. Except as provided by Section 125, all materials filed with the Board pursuant to these rules and all materials issued by the Board pursuant to these rules are public documents subject to inspection, examination and copying.

(4-5-00)()

007. -- 009. (RESERVED).

00510. DEFINITIONS AND ABBREVIATION (RULE 10).

As used in this chapter:

(4-5-00)()

01. Answer. Response to allegations, requests or claims of an appeal.

()

~~012. Appellant.~~ Means any A party, person, natural or otherwise, or governmental subdivision or agency appealing to the Idaho Board of Tax Appeals.

(4-5-00)()

~~023. Board.~~ Means the Idaho Board of Tax Appeals, board members, presiding officer, or hearing officer as the context may dictate whenever it occurs in this chapter.

(4-5-00)()

~~034. Case File.~~ Means the ~~o~~Official record maintained by the Board regarding an

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appeal. The case file is a file folder(s) containing the documentary record including submissions from the parties, plus any recordings of hearings. (4-5-00)()

045. Comparable Sales. ~~Means-r~~ Recently sold properties that are similar in important respects to the property being appraised. (4-5-00)()

056. De Novo. ~~Means-t~~ The Board will decide questions of fact and of law based on the evidence and legal arguments presented in the proceedings before the Board. ~~Parties will need to be prepared to present all exhibits, testimony and argument presented previously to the county board of equalization or the State Tax Commission, or in any other proceedings involving the tax dispute. New evidence and argument may also be presented.~~ (4-5-00)()

067. Findings of fact and Conclusions of Law. ~~Means-e~~ Concise statements of the determinations made as to contested issues of fact, and statements of the applicable law as determined by the Board which are applicable to the findings of fact. (4-5-00)()

078. Intervenor. ~~Means-a~~ Any party voluntarily intervening in an appeal who meets the qualifications and requirements for intervention under Section 085. (4-5-00)()

089. Parcel. ~~Means-e~~ Each separate property ownership as represented by the county assessment rolls. (4-5-00)()

0910. Party. ~~Means-any~~ A person, natural or otherwise, or governmental subdivision or agency ~~entitled to or appearing~~ authorized to appear before the Board in any proceedings of the Board. (4-5-00)()

101. Presiding Officer or Hearing Officer. ~~Means-any~~ A member of the Board, or any person who is assigned to conduct a conference or hearing by the Board. The presiding officer shall have authority as provided by ~~Section~~ Rule 106. (4-5-00)()

112. Respondent. ~~Means-any~~ A party answering or otherwise responding to an appeal. (4-5-00)()

123. Subject Property. ~~Means-t~~ The property ~~being appraised~~ under discussion. (4-5-00)()

134. Substantive Issue. ~~Means-a~~ An issue where a ~~substantive~~ right, interest or privilege of any party is involved that may be prejudiced as opposed to minor or mere procedural matters dealt with by the Board. (4-5-00)()

011. ABBREVIATIONS (RULE 11).

1401. BTA. ~~Means~~ Idaho Board of Tax Appeals. (4-5-00)()

1502. BOE. ~~Means~~ County Board of Equalization. (4-5-00)()

1603. STC. ~~Means~~ Idaho State Tax Commission. (4-5-00)()

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012. ORGANIZATION (RULE 12).

The Chairman of the Board shall serve as the administrative officer. ()

01. Election. The Chairman shall be elected annually by the board members in consideration of experience with the Board and the member's availability to serve and support the Board's administrative duties. ()

02. Power. The Chairman shall oversee the issuance of acknowledgment letters, notices of hearing, notices of show cause hearings, and is authorized to perform all other procedural duties such as issuing orders on nonsubstantive rulings without a formal meeting of the Board. The Chairman shall not issue any substantive orders in any case, except upon a roll call vote of the board members where a majority concurs in the result. ()

~~00613. -- 019. (RESERVED).~~

020. PROCEDURE GOVERNED (RULE 20).

01. Procedure. These rules shall govern all practice and procedure before the Board of Tax Appeals of the State of Idaho, hereinafter referred to in these rules as the Board. Regular proceedings shall be governed by Sections 001 through 159 and shall be conducted in conformity with the Administrative Procedure Act set out in Chapter 52, Title 67, of the Idaho Code. Proceedings in the small claims division of the Board shall be governed by Sections 160 through 170. Except as provided in Rules 800 through 860, these rules are affirmatively promulgated to supersede IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General". (4-5-00)()

02. Purpose. The purpose for the law providing for the establishment of the Idaho Board of Tax Appeals is to provide an independent, fair, expeditious, and less expensive opportunity for taxpayers and other parties to appeal from most tax related decisions of county boards of equalization and the State Tax Commission. (4-5-00)

021. LIBERAL CONSTRUCTION (RULE 21).

These rules will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Board. (4-5-00)()

022. CITATION (RULE 22).

The official citation of this chapter is IDAPA 36.01.01, et seq. For example, this section's citation is IDAPA 36.01.01.022. In documents submitted to the Board or issued by the Board, these rules may be cited as BTA (Board of Tax Appeals) and rule number less leading zeroes. For example, this rule may be cited as BTA Rule 22. ()

~~022.—024. (RESERVED).~~

Section 025 has been moved and renumbered to Section 005.

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0263. -- 029. (RESERVED).

030. ~~APPEARANCE~~ REPRESENTATION AND PRACTICE BEFORE THE BOARD (RULE 30).

~~All Proceedings.~~ The right to appear and practice before the Board shall be limited to the following classes of persons: (4-5-00)(____)

01. **Natural Persons.** ~~Parties who are~~ A natural persons may ~~representing themselves;~~ himself or herself or be represented by an authorized attorney. (4-5-00)(____)

02. ~~Authorized Persons~~ **Corporations.** Duly authorized directors; ~~or officers or designated full-time salaried employees~~ of corporations representing the corporations ~~of for~~ which they are, respectively, directors; ~~or officers or employees;~~ (4-5-00)(____)

03. ~~Authorized Representation~~ **Partnerships, Joint Ventures and Trusts.** Duly authorized partners, joint venturers, ~~designated full-time salaried employees,~~ or trustees representing their respective partnerships, joint ventures or trusts; (4-5-00)(____)

04. **Authorized Attorneys.** Attorneys duly authorized, who are qualified and entitled to practice in the courts of the state of Idaho; (4-5-00)

05. **Public Officers—Or—Employees.** Public officers ~~or designated employees~~ representatives when representing the governmental agency ~~of which they are an officer or employee;~~ (7-1-93)(____)

06. ~~Board Approved Power Of Attorney.~~ ~~A party may designate a representative in writing through a Board approved power of attorney;~~ (4-5-00)

07. ~~Intervention.~~ ~~Parties entitled to intervene under Section 085.~~ (4-5-00)

031. INITIAL PLEADING BY PARTY - LISTING OF REPRESENTATIVES (RULE 31).

The initial pleading of each party at the formal stage of a contested case must name the party's representative(s) for service of documents and shall state the representative's(s') address(es) for the purpose of receipt of all documents. Unless authorized by order of the Board, no more than two (2) representatives for service of documents may be listed. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party's representative, the first person signing the pleading will be considered the party's representative. The representative shall provide proof of authorization when representing another person, a corporation, partnership, joint venture, trust or governmental agency. (____)

032. SUBSTITUTION OR WITHDRAWAL OF REPRESENTATIVE (RULE 32).

A party's representative may be changed and a new representative substituted by notice to the Board and to all other parties when the proceedings are not unreasonably delayed. The presiding officer may permit substitution of representatives at hearing. Representatives who wish to withdraw, must immediately file a written notice of withdrawal. (____)

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033. TAKING OF APPEARANCES -- PARTICIPATION BY TAXING AUTHORITY STAFF (RULE 33).

In all proceedings in which the taxing authority may participate, or in any instance where a report or recommendation of the taxing authority may be considered in reaching a decision, at the timely request of any party, or upon the board's motion, a representative of the taxing authority shall appear at any hearing and be available for cross-examination and shall further participate in the hearing in the same manner as a party. ()

~~031.~~—034. (RESERVED).

035. CONDUCT (RULE 35).

A party to an appeal, or representative, shall conduct themselves in all proceedings before the Board in an ethical, respectful, and courteous manner. (4-5-00)()

036. ENFORCEMENT (RULE 36).

The Board and each party to an appeal are responsible for the efficient, just, and speedy conduct of the formal hearing and other proceedings before the Board. Board members or the assigned hearing officer may impose sanctions on a party for ~~repeated~~ delays, the failure to comply with a subpoena, discovery order, discovery procedure abuses, and any other matter regarding conduct of the appeal. In imposing sanctions, the Board shall be allowed to use its discretion and shall be guided by the practices of the courts of this state in imposing sanctions for similar offences in civil proceedings. Board sanctions shall include, but not be limited to, dismissal of an appeal or the granting of default judgment. (4-5-00)()

037. EX PARTE COMMUNICATIONS (RULE 37).

~~Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party or representative, except upon notice and opportunity for all parties to participate in the communication.~~ Unless required for the fair disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. When a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and distribute a copy of it to all parties of record or order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. (4-5-00)()

038. -- 039. (RESERVED).

040. PARTIES (RULE 40).

~~All parties~~ party appealing to the Idaho Board of Tax Appeals shall be known as "Appellant". The party or agency answering said appeal shall be known as "Respondent". ~~Parties~~ A party intervening in an appeal shall be known as "Intervenor". (4-5-00)()

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041. -- 044. (RESERVED).

045. NOTICE OF APPEAL -- CONTENTS (RULE 45).

All appeals shall be in writing and shall contain clear and concise statements of the matters that lay a foundation for the relief that may be granted by the Idaho Board of Tax Appeals. All appeals shall allege necessary facts to establish jurisdiction of the Board to hear said appeal.

(4-5-00)()

01. **Appeals.** All appeals shall contain: (4-5-00)

a. Appellant's full name; (4-5-00)

b. Current mailing address; (4-5-00)

c. Tax year(s) being appealed; and (4-5-00)

d. The telephone number where the appellant can be reached during normal daytime business hours. (4-5-00)

02. **Appeal Filed by an Attorney or Representative.** If any appeal is filed by an attorney or other representative, the pleading shall contain: (4-5-00)

a. The attorney's or representative's name, address, telephone number; and (4-5-00)

b. ~~For attorneys, the~~ The Idaho State Bar License number for attorneys. ~~Representatives shall include a power of attorney from the appellant.~~ (4-5-00)()

03. **Board Must Be Informed of Any Changes in Address or Phone Number.** Parties and representatives must keep the Board informed of any changes in address or telephone number. (4-5-00)

046. NOTICE OF APPEAL -- BOE APPEALS (RULE 46).

01. **Separate Notice.** The party filing the appeal shall ~~substantially~~ complete ~~one (1)~~ an Appeal Form approved by the Board, or a separate notice of appeal; ~~A separate Appeal Form will be completed for any each parcel/assessment of property for which an appeal is brought.~~ Blank Appeal Forms shall be provided by the Board to each county auditor annually by May 1.

(4-5-00)()

02. **Contents BOE Appeals.** In the case of appeals brought under Section 63-511, Idaho Code, the notice of appeal shall ~~substantially~~ contain: (4-5-00)()

a. A legal description of the property on which the appellant is appealing the valuation; (4-5-00)

b. ~~A summary of the findings and rulings of the county commissioners of the county in which said property is located sitting as a board of equalization and when available a copy of~~

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the final decision of the county board of equalization; (4-5-00)()

c. ~~A summary of~~ The objections to the findings of the board of equalization and the basis of said objections by the appellant to include a clear declaration of the market value alleged by the appellant, and in the case of a property tax exemption claim, the code section(s) involved and a summary of the factual basis supporting why exempt status should be granted or denied; (4-5-00)()

d. ~~An attached~~ copy of the county's final tax assessment notice for the year in question on the property that is the subject of the appeal. ~~In the event such tax assessment notice is not available, the appellant should set out in his appeal the reason for his failure to provide said notice; and~~ (4-5-00)()

e. A statement that the appellant or qualified representative has read the notice of appeal and believes the contents to be true, followed by the person's signature, ~~and or~~ the signature of their attorney or representative, ~~if any~~. (4-5-00)()

03. Time Limit and Filing Place. Appeals brought under Section 63-511, Idaho Code, must be filed within thirty (30) days after mailing of notice of a decision of the board of county commissioners sitting as a board of equalization or pronouncement of a decision if this is announced at a hearing. Notice of such appeal, ~~stating the grounds therefor~~, must be filed ~~in duplicate~~ with the county auditor in the county in which the property assessment originated. Appeals filed under Section 63-511, Idaho Code, cannot be perfected by filing them directly with the Idaho Board of Tax Appeals. Appeals not timely filed as provided by statute and ~~Section 046 Rule 46~~ shall be dismissed. (4-5-00)()

047. NOTICE OF APPEAL -- STC APPEALS (RULE 47).

01. ~~Section 63-3049, Idaho Code~~ Contents STC Appeals. In appeals brought under Section 63-3049, Idaho Code, the notice of appeal ~~should~~ shall include ~~a~~; (4-5-00)()

a. A copy of the redetermination or final decision by the State Tax Commission appealed from; ()

b. ~~a summary of~~ The objections of the appellant to ~~said~~ the redetermination, or final decision; ()

c. ~~and a summary of~~ The basis for said objections; ()

d. A statement of the amount in dispute shall be included with the notice of appeal If the amount in dispute is different from the redetermination or deficiency determination decision; ~~and then a statement of the amount in dispute shall be included with the notice of appeal. In the event that a copy of the redetermination or decision appealed from cannot be included in the appeal, the appellant should set out his reason for failing to include a copy of said redetermination or decision.~~ ()

e. Proof of compliance with the mandatory deposit requirements as provided in Section 63-3049, Idaho Code, in the form of a receipt from the State Tax Commission. ()

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02. Perfected Appeal - Filing Time. Appeals brought under Section 63-3049, Idaho Code, must be filed with the Board within ninety-one (91) days after the receipt of notice of the decision of the State Tax Commission ~~denying in whole or in part any protest of the taxpayer.~~
(4-5-00)()

~~**02. Section 63-3632, Idaho Code.** In appeals brought under Section 63-3632, Idaho Code, the notice of appeal should include a summary of the decision by the State Tax Commission from which the appellant is appealing, a copy of said decision and a summary of the appellant's objections to said decision, together with his basis for said objections. Appeals brought under Section 63-3632, Idaho Code, must be filed with the Board within thirty (30) days of the date on which notice of redetermination or decision is mailed to or served upon the taxpayer.~~
(4-5-00)

048. NOTICE OF APPEAL -- DEFECTIVE APPEALS (RULE 48).

01. Amendment or Dismissal. Upon the filing of any notice of appeal it will be inspected by the Board and if found to be materially defective or not substantially in compliance with the requirements of this chapter the Board may dismiss such appeal or require its amendment. After notice from the Board, the appellant shall have fourteen (14) days to amend and perfect such appeal. Failure to perfect the appeal may result in dismissal of the appeal without further notice.
(4-5-00)()

02. Jurisdiction. If a notice of appeal fails to set out allegations alleging jurisdiction of the Board, or if such allegations are disputed, the Board may require a separate hearing and may hear evidence on the questions of the Board's jurisdiction, or the Board may require proof of jurisdiction at the hearing of the appeal on its merits.
(4-5-00)()

049. NOTICE OF APPEAL -- ACKNOWLEDGMENT LETTER (RULE 49).

The Board will acknowledge receipt of a notice of appeal. ~~When a perfected appeal has been filed, the Board shall provide the appellant with a written acknowledgment of the appeal~~ within fourteen (14) days of receipt of appeal in ~~BTA~~ the Board's office.
(4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

051. NOTICE OF APPEAL -- FILING STC APPEALS (RULE 51).

~~**01. Filing.**~~ Notices of appeal to the Board from Idaho State Tax Commission decisions and any other papers required to be filed with the Board shall be deemed filed upon actual receipt by the clerk of the Board or, if mailed, such papers shall be deemed filed as of the federal post office postmark date. Postage meters do not designate the mailing date.
(4-5-00)()

052. NOTICE OF APPEAL – FILING BOE APPEALS (RULE 52).

Papers, including notice of appeal, required to be filed with the county auditor shall be deemed filed upon actual receipt by the county auditor or, if mailed, such notice shall be deemed filed as

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of the federal post office postmark date. Postage meters do not designate the mailing date.

(4-5-00)()

021. County Auditor. Upon receiving a notice of appeal to the Board under Section 63-511, Idaho Code, the county auditor in the county where the notice of appeal is filed shall forward *said* to the Board:

(4-5-00)()

a. The notice of appeal ~~to the Board, together with~~ including the filing date; ()

b. ~~Any~~ Any available exhibits or other evidence considered by the BOE; ~~including a~~ ()

c. A copy of the written appeal to the BOE; ()

d. A copy of any decision made or action taken by the BOE; and ~~a~~ ()

e. A copy of the minutes of the meeting(s) of the ~~county board of equalization~~ BOE dealing with said appeal, ~~or, in the event that no minutes are available, the auditor shall submit to the Board a certified statement to the effect that no such minutes are available.~~ ()

02. Minutes. The minutes ~~shall~~ should include at a minimum: (4-5-00)()

a. The full name of persons appearing before the ~~Board of Equalization~~ BOE in the appeal. (4-5-00)()

b. Clear identification of the parcel(s)/assessment(s) appealed. (4-5-00)

c. The decision made or action taken by the BOE indicating clearly the value or exempt status decided for each parcel/assessment considered. (4-5-00)

~~**d.** A summary of the basis for any decision made or action taken by the BOE.~~ (4-5-00)

055. CONSOLIDATION -- HEARINGS AND DECISIONS (RULE 55).

01. Appeals and Hearings. Whenever it shall appear to the Board or presiding officer that two (2) or more ad valorem cases from the same county or different counties involve the same or substantially similar issues as well as the same or similar property classes or subclasses, such as assessment categories, or where the same or similar issues exist in other tax type cases, the Board or presiding officer may issue a written or verbal order consolidating the cases for hearing. There shall be no consolidation of cases where the rights of any party would be prejudiced by such procedure. Two (2) or more parties to appeals may also request in writing that cases be consolidated under the same criteria listed above. The Board or presiding officer in issuing a consolidation order in ad valorem appeals shall consider: whether the parcels are contiguous, any response given to a consolidation request, and any other matters deemed appropriate in determining the disposition of the matter. In a consolidated hearing the presiding officer determines the order of the proceeding. (4-5-00)

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02. Decisions. The Board may at its discretion issue a written decision in a consolidated format. (4-5-00)

056. -- 059. (RESERVED).

060. FORM OF PLEADINGS (RULE 60).

~~Pleadings before the Idaho Board of Tax Appeals shall be styled after those provided in the Idaho Rules of Civil Procedure. All pleadings, letters, petitions, briefs, notices, and other documents shall be on white, eight and one-half inches by eleven inches (8 1/2 x 11) paper, legibly written, printed, or typewritten on one (1) side only and include the current mailing address and telephone number and be signed by the appropriate authorized party or any representative of record submitting the same. The Board may require responsive pleadings from the opposing party in order to clarify the issues raised on appeal. Parties may also file responsive pleadings whenever they feel such pleadings are necessary to clarify the issues raised on appeal, whether required by the Board or not.~~ (4-5-00)()

01. Form. All pleadings, except those filed on Board forms, submitted by a party and intended to be part of the record must: ()

a. Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on one (1) side only and be legibly written; ()

b. State the title of the pleading and the appeal number, if assigned, at the top of the cover page; ()

c. Include on the upper left corner of the first page the name(s), mailing and street address(es), and telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; ()

d. Have at least one inch (1") left and top margins; ()

e. The Board may require a response from the opposing party in order to clarify the issues raised on appeal. Parties may also file a response whenever they feel such is necessary to clarify the issues raised on appeal, whether required by the Board or not; and ()

f. Must be signed by the appropriate authorized party or any representative of record submitting the same. ()

02. Example. Documents complying with this rule will be in the following form: ()

Name of Representative
Mailing Address of Representative
Street Address of Representative (if different)
Telephone Number of Representative
FAX Number of Representative (if there is one)
Attorney/Representative for (Name of Party)

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BEFORE THE BOARD OF TAX APPEALS

(Title of Proceeding) APPEAL NO.

() (TITLE OF DOCUMENT)

()

061. SERVICE OF DOCUMENTS (RULE 61).

01. Service. All notices, pleadings, exhibits, papers, orders, decisions, and all other documents of any kind submitted to the Board shall be served upon all other parties, counsel, or parties' representatives of record. Service by regular mail of such documents will be considered adequate service. If service is made by mail the papers shall be deposited in the post office properly addressed to the person to whom they are being served, with postage prepaid. Proof of such service must be filed with the Board. An affidavit or certificate of service, or acknowledgment of service will be considered adequate proof of service. Decisions or orders of the Board shall be served upon both the party and party's counsel or representative of record, if any. When a document has been filed by FAX, it must be served upon all other parties with FAX facilities by FAX and upon the remaining parties by overnight mail, hand delivery, or the next best available service if these services are not available. The presiding officer may direct that some or all of these documents be served on interested or affected persons who are not parties.

(4-5-00)()

02. Proof of Service. Every document filed with and intended to be part of the Board record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have
this day of , served the foregoing (name(s) of
document(s)) upon all parties of record in this
proceeding, (by delivering a copy thereof in person:
(list names)) (by mailing a copy thereof,
properly addressed with postage prepaid or facsimile or
hand delivery to: (list names)).

(Signature)

()

062. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 62).

Defective, insufficient or late pleadings may be returned or dismissed.

()

063. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS (RULE 63).

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective ten (10) days after filing.

()

~~062.~~—064. (RESERVED).

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065. COMPUTATION OF TIME (RULE 65).

In computing any period of time prescribed or allowed by these rules or by any applicable statute, except where contrary to other applicable statutes, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included in the count unless it is a holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. (4-5-00)(____)

066. FILING OF DOCUMENTS (RULE 66).

01. Filing Place. All documents filed with the Board shall be filed with the clerk of the Board ~~and filed at its Boise office address~~ at the Board's mailing address or street address. (4-5-00)(____)

02. Number of Copies. Unless otherwise indicated by the Board, one (1) copy shall be filed. (4-5-00)(____)

067. -- 069. (RESERVED).

070. PREHEARING CONFERENCES (RULE 70).

01. Subject of Conferences. The Board may direct the appellant, respondent, and any intervenor to appear before it to consider: (4-5-00)

- a. Any and all matters that can be agreed upon. (7-1-93)
- b. Formulating or simplifying the issues. (4-5-00)
- c. Stipulations which will avoid unnecessary proof. (7-1-93)
- d. Preliminary motions to be made prior to the hearing. (7-1-93)
- e. Requiring respondent and appellant to furnish to each other and the Board a list of all witnesses to be called by the parties at the hearing. (4-5-00)
- f. The limitation of the number of expert or lay witnesses and the disclosure of the identity of persons having knowledge of relevant facts and who may be called as a witness. (4-5-00)
- g. The scheduling of discovery, hearings, or other time sensitive matters. (4-5-00)
- h. Discussing settlement. (4-5-00)
- i. Fair hearing procedures. (4-5-00)
- j. Such other matters that may expedite orderly and speedy conduct as will aid in the disposition of the controversy. (4-5-00)

02. Notice of Prehearing Conference. Notice of the place, date and hour of a

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prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference must contain the same information as notices of hearing with regard the Board's obligations under the American with Disabilities Act. ()

023. Failure to Appear. Failure of either party to appear at the time and place appointed by the Board under ~~Section~~ Rule 070 may result in a dismissal of that party's appeal or the granting of said appeal as the case may be. (4-5-00)()

034. Prehearing Order. The Board or its designate may prepare or require the preparation of an order reciting the findings and action taken at such conference. Such order shall supersede the pleadings and control the subsequent course of the proceeding, unless modified by the Board to prevent manifest injustice. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. (4-5-00)()

045. Determination Upon Results of Conference. If, after the prehearing conference provided for in ~~Section~~ Rule 070, and after appropriate notice to the parties, the Board determines that there is sufficient evidence and stipulation upon which it can make a decision, it may vacate the hearing previously set and determine the appeal upon such evidence and stipulations. (4-5-00)()

071.—074. (RESERVED).

072. MOTIONS (RULE 72).

01. Form and Contents. A motion shall: ()

a. Fully state the facts upon which it is based; ()

b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which it is based; and ()

c. State the relief sought. ()

02. Oral Argument – Time for Filing. If the moving party desires oral argument or hearing on the motion it must state so in the motion. Any motion to dismiss, strike or limit an appeal must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within ten (10) days after filing of the answer. Other motions may be filed at any time upon compliance with Subsection 72.03. ()

03. Prehearing Motions. All prehearing motions must be filed at least fifteen (15) days prior to a scheduled hearing to be considered by the Board. ()

073. ANSWERS (RULE 73).

01. Answers to Pleadings Other Than Motions. Answers to pleadings, or appeals

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must be filed and served on all parties of record within ten (10) days after filing of the pleading being answered, unless order or notice modifies the time within which answer may be made. When an answer is not timely filed under this rule the presiding officer may issue a notice of default. Answers to appeals must admit or deny each material allegation of the appeal. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. ()

02. Answers to Motions. Answers to motions may be filed by persons or parties involved in the appeal. In no event is any party entitled to more than fourteen (14) days to respond to a motion or move for additional time to respond to a motion. ()

074. BRIEFS (RULE 74).

The Board or presiding officer may request briefs from the parties either prior to the hearing of the evidence or after said hearing. ()

075. ~~MEMORANDUMS, BRIEFS AND~~ DISCOVERY RULE 75).

~~**01. Requests For Briefs.** Regardless of whether or not a prehearing conference has been held, the Board or presiding officer may request briefs from the parties either prior to the hearing of the evidence or after said hearing.~~ (4-5-00)()

021. Discovery -- Written Permission. Parties to a pending appeal may engage in discovery if they obtain prior written permission from the ~~Board~~ presiding officer. ~~The application for discovery must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgment letter. Discovery shall be completed at least ten (10) days prior to scheduled hearing. Service upon other parties is required at the same time as filing with the Board in accordance with the requirements of this chapter. The application for permission should contain a short plain statement of the reason discovery is useful to the preparation of the appeal and describe the intended discovery.~~ The following procedures shall govern discovery: (4-5-00)()

a. The motion for discovery must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgment letter. Only one (1) discovery motion may be filed by a party. ()

b. The motion shall contain a short plain statement of the reason the discovery is useful to the preparation of the appeal. ()

c. The motion shall be accompanied by the complete discovery request. The presiding officer shall deny discovery motions which do not include the complete discovery request. ()

d. Discovery shall be completed at least ten (10) days prior to the scheduled hearing, unless otherwise ordered by the presiding officer. ()

e. Service upon other parties is required at the same time as filing with the Board in accordance with the requirements of this chapter. ()

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f. Discovery responses shall be served simultaneously to all other parties and the Board. Supplementation of responses shall be in accordance with the Idaho Rules of Civil Procedure. ()

g. The order compelling discovery may provide that voluminous answers need not be served so long as the documents are made available for inspection and copying under reasonable terms. ()

h. The motion shall be signed by an authorized representative or a party to the appeal. ()

02. Scope of Discovery -- BOE Appeals. Production requests and written interrogatories may be submitted in accordance with the rule or order of the Board. Only the following may be subject to discovery unless otherwise ordered by the presiding officer: ()

a. Information or records concerning appraisal and assessment of the subject property and comparable properties, financial statements and related schedules with respect to the subject property and comparable properties, sale agreements or contracts with respect to the subject property, comparable sales documents and lease agreements with respect to the subject property, completed studies or reports with respect to the subject property and comparable properties. For an exemption appeal, information or documents relating to the exemption. ()

b. The request for production of documents or written interrogatories concerning the matters set forth above are limited to the last three (3) years proceeding the assessment. ()

c. The request for production of documents shall specifically identify each document requested. The request for inspection of land or other property shall be in accordance with the Idaho Rules of Civil Procedure. ()

03. Scope of Discovery -- STC Appeals. ()

a. Production requests, requests for admissions and written interrogatories may be submitted in accordance with the rule or order of the Board. ()

b. Depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the Board. ()

04. Sanctions. Failure to substantially comply with Board ordered discovery, in a good faith attempt at full compliance, may result in one or more sanctions up to and including a dismissal or default judgment of the appeal(s.) ()

076. -- 08479. (RESERVED).

080. DISCOVERY WITHOUT BOARD AUTHORIZATION (RULE 80).

Parties may agree among themselves to provide for discovery without reference to the Board's statutes, rules of procedure, or orders. ()

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081. (RESERVED).

082. AGENCY -- CONTRASTED WITH OTHER DISCOVERY (RULE 82).

This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, examination (including mental or physical examination) and investigation. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination and investigation may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights where provided of deposition, production request or written interrogatory and subpoena, can be used by parties only in connection with formal proceedings before the Board. ()

083. -- 084. (RESERVED).

085. INTERVENTION (RULE 85).

01. Intervention of Right. Upon timely application made in writing no later than ~~ten~~ fifteen (105) days prior to the hearing of an appeal, anyone shall be permitted to intervene in an appeal: (4-5-00)()

a. When a statute confers an unconditional right to intervene; (7-1-93)

b. When the applicant claims in writing an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. (4-5-00)

c. In any appeal in which it is not a party the Idaho State Tax Commission may intervene as a matter of right. (7-1-93)

02. Permissive Intervention. Upon timely application made in writing no later than ~~ten~~ fifteen (105) days prior to the date set for hearing of an appeal anyone may be permitted to intervene in an action: (4-5-00)()

a. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenor who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. ()

~~a~~b. When a statute confers a conditional right to intervene; or (7-1-93)

~~b~~c. In appeals brought under Section 63-511, Idaho Code, when an applicant can show in writing that he is a person aggrieved by the decision or that he is a taxpayer of the county in which said appeal was brought; or (4-5-00)

~~e~~d. When an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute

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or executive order administered by a federal or a state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency, upon timely application in writing, may be permitted to intervene in the action. In exercising this discretion the Board shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. (4-5-00)

086. PUBLIC WITNESSES (RULE 86).

Persons not parties and not called by a party who testify at hearing are called “public witnesses”. Public witnesses do not have parties’ rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses’ written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 106 and 107, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits. ()

0867. -- 0989. (RESERVED).

090. CONSENT AGREEMENT -- DEFINED -- FORM AND CONTENTS (RULE 90).

01. Consent Agreement Defined. Agreements between the taxing authority and another person(s) in which one (1) or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, are called “consent agreements”. Consent agreements are intended to require compliance with existing law. ()

02. Requirements. A consent agreement must: ()

a. Recite the parties to the agreement; ()

b. Fully state the conduct proscribed or prescribed by the consent agreement. ()

03. Additional. In addition, a consent agreement may: ()

a. Recite the consequences of failure to abide by the agreement; ()

b. Provide for payment of civil or administrative penalties authorized by law; ()

c. Provide for loss of rights, licenses, awards or authority; ()

d. Provide for other consequences as agreed to by the parties; and ()

e. Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. ()

091. -- 099. (RESERVED).

100. FAIR HEARING (RULE 100).

01. Hearing Opportunity. In any case appealed to the Board, all parties shall be

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afforded an opportunity for a fair hearing after notice of hearing is provided. Opportunity shall be afforded all parties to present evidence and argument. (4-5-00)

02. Purpose of Hearing. The Board's goal in conducting hearings shall be the acquisition of sufficient, accurate evidence to support a fair and just determination of the issues involved in the appeal. (~~4-5-00~~)()

03. Notice of Hearing -- Mailing. Notice of place, date, and hour of all hearings shall be mailed at least twenty (20) days before the date set for hearing. (4-5-00)

04. Setting of Hearing Date. In all instances where a hearing is deemed necessary by the Board, the Board will schedule a time and place each party may appear and offer evidence and arguments in support of his position. (4-5-00)

05. Telephonic Hearing. The Board may conduct telephonic hearings where each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. (4-5-00)

06. Notice of Hearing -- Contents. The notice of hearing shall include: (~~4-5-00~~)()

- a. A statement of the time, place and nature of the hearing; (7-1-93)
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held; (7-1-93)
- c. A reference to the particular sections of the statutes and rules involved concerning the Board's legal authority to conduct the hearing; (4-5-00)
- d. The name of the hearing officer who will conduct the hearing; (4-5-00)
- e. A short and simple statement of the matters asserted or the issues involved. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished. (4-5-00)

07. Conference at Hearing. The presiding officer may convene the parties before hearing or recess the hearing to discuss formulation of simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. ()

101. FAILURE TO APPEAR -- DEFAULT OR DISMISSAL -- SETTING ASIDE -- APPEARANCES (RULE 101).

01. Default or Dismissal. Failure of either party to appear at the time and place appointed by the Board may result in a dismissal of that appeal or of the granting of the appeal. (4-5-00)

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02. Setting Aside. Within ten (10) days after service of a default or dismissal order ~~under Section 101~~, the party against whom the order was entered may file a written objection requesting that the order be vacated and stating the specific grounds relied upon. The objection must be served on all other parties to the appeal and their representatives in accordance with the requirements of this chapter. The Board may, for good cause, set aside an entry of dismissal, default, or final order. (4-5-00)()

03. Waiver of Parties' Appearance. Upon written stipulation of both parties that no facts are at issue, an appeal may be submitted to the Board with or without oral argument. However, the Board in its discretion may require appearance for argument or ~~the collection~~ presentation of evidence. (4-5-00)()

~~102.—104. (RESERVED).~~

102. WITHDRAWAL OF PARTIES (RULE 102).

Any party may withdraw from the appeal in writing or on the record at hearing. ()

103. (RESERVED).

104. ALTERNATIVE DISPUTE RESOLUTION (RULE 104).

01. Alternative Resolution of Contested Cases. The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, fact-finding, minitrials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. The Board may use ADR for the resolution of issues in controversy in a contested case if the Board finds that such a proceeding is appropriate. The Board may find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. ()

02. Neutrals. When ADR is used for all or a portion of a contested case, the Board may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the Board or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. ()

03. Confidentiality. Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or the communication is required by court order, statute or rule to be made public. ()

105. INFORMAL DISPOSITION -- SETTLEMENT (RULE 105).

Any action may be dismissed by the Board by stipulation, agreed written settlement, consent

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order, or default. For good cause shown and upon written motion made within ten (10) days of entry of a Board order, the Board may set aside such entry, judgment, or order. ~~(4-5-00)~~()

01. Formalizing Agreements. Agreements by the parties may be put on the record or may be reduced to writing and filed with the Board. ()

02. Confidentiality. Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record. ()

03. Settlement Inquiry. Through notice or order on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. ()

04. Consideration of Settlements. Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer may summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the Board's charge under the law. ()

05. Burden of Proof. Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. ()

06. Settlement Not Binding. The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. ()

106. PRESIDING OFFICER (RULE 106).

Any member(s) of the Board or assigned hearing officer(s) may preside at the hearing and shall have power to: ~~(4-5-00)~~()

01. Oath or Affirmation. Administer oaths or affirmations, call a party or other person present at hearing as a witness, examine witnesses and receive evidence. (4-5-00)

02. Depositions. Take or cause depositions to be taken. (7-1-93)

03. Hearing. Regulate the course of the hearing and maintain an orderly proceeding. (4-5-00)

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- 04. Motions.** Dispose of the procedural requests, motions or similar matters. (7-1-93)
- 05. Certification by Board.** Make decisions or proposals for decisions (subject to certification by the entire Board or a majority of the Board). (4-5-00)
- 06. Official Record.** Develop a full and accurate record and certify the record of said appeal on behalf of the Board. ~~(4-5-00)~~(____)
- 07. Other Action.** Take any other appropriate action reasonable under the circumstances. (4-5-00)

107. PROCEDURE AND TESTIMONY.

- 01. Preliminary Procedure.** The presiding officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motion or motions. Parties may then make opening statements as they may desire. (7-1-93)
- 02. Testimony.** All testimony to be considered by the Board in formal hearings, except matters noticed officially or entered by stipulation at hearings or prehearing conference, shall be taken only on oath or affirmation. (4-5-00)
- 03. Order of Procedure.** The appellant shall go forward to present his case first with the respondent and any intervenor then presenting such matters as he deems proper; ~~provided, however, the order of presentation provided in Section 107 shall have no bearing as to the party's burden of persuasion or proof.~~ Parties may then make closing statements as they may desire in the same order as the presentation of evidence. The presiding officer may require that the parties submit briefs in addition to, or in lieu of, closing arguments. A maximum of two (2) weeks shall be allowed to submit these briefs. The presiding officer may prescribe a different procedure than herein provided ~~if he deems it proper.~~ ~~(4-5-00)~~(____)
- 04. Presentation of Evidence.** Evidence may be presented in the following order: (4-5-00)
- a.** Evidence is presented by appellant. (4-5-00)
 - b.** Evidence is presented by any intervening or opposing party. (4-5-00)
 - c.** Rebuttal evidence is presented by appellant. (4-5-00)
 - d.** Surrebuttal evidence is presented by any intervening or opposing party. (4-5-00)
- 05. Examination of Witnesses.** With regard to any witness who testifies, the following examination may be conducted: (4-5-00)
- a.** Direct examination conducted by the party who called the witness. (4-5-00)
 - b.** Cross-examination by any intervening or opposing party. (4-5-00)

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- c. Redirect examination by the party who called the witness. (4-5-00)
- d. Recross-examination by any intervening or opposing party. (4-5-00)
- e. Examination by the hearing officer. (4-5-00)

108. -- 109. (RESERVED).

110. STIPULATIONS (RULE 110).

With the approval of the presiding officer the parties may stipulate as to any fact at issue, either by written stipulation or introduced in evidence as an exhibit or by oral statement shown upon the hearing record. Any such stipulation shall be binding upon all parties so stipulating and may be regarded by the Board as evidence ~~at the hearing~~. The Board, however, may require evidence of the facts stipulated, notwithstanding the stipulation of the parties. (4-5-00)(____)

111. CONTINUANCE -- EXTENSIONS OF TIME (RULE 111).

01. Continuances. A continuance may be ordered by the Board upon filing of a timely and written ~~request~~/motion containing the stipulated agreement and signature of all parties to the appeal. For a scheduled hearing, timely shall mean at least fifteen (15) days prior to hearing. The request/motion shall clearly and convincingly show good cause and contain the specific time extension requested. (4-5-00)(____)

02. Consideration. Continuances shall be generally disfavored by the Board. The Board shall grant, or require on its own initiative, a continuance only when unusual and highly pressing circumstances are present. In no instance shall an extension cause a delay in proceedings for more than three (3) months. In no instance shall a second continuance be granted. (4-5-00)

112. -- 114. (RESERVED).

115. OFFICIAL NOTICE (RULE 115).

The Board may take official notice of judicially cognizable facts. In addition, the Board may take notice of general, technical, financial, or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed. Parties shall be given a reasonable opportunity to object, review, examine, and rebut or contest the ~~document~~ information sought to be noticed. ~~The Board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.~~ (4-5-00)(____)

116. OPEN HEARINGS AND CLOSED DELIBERATIONS (RULE 116).

01. Public Hearings. All hearings conducted by the Board shall be open to the public except where confidential evidence is being taken under a protective order. (4-5-00)

02. Closed Deliberations. After hearing and the close of the record, the Board may recess to closed deliberations for the limited purpose of deciding the matter before it. (4-5-00)

117. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 117).

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01. Evidence, Admissibility and Evaluation. ~~Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder, may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of serious affairs. The Board shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially any part of the evidence may be received in written form. The presiding officer shall rule on the admissibility of all evidence and may grant exceptions to the requirements of Section 117 in the interest of justice. Such ruling may be reviewed by the Board in determining the matter on its merits. Any evidence ruling may be deferred to the entire Board by the presiding officer or taken under advisement by the presiding officer. The presiding officer may receive evidence subject to a motion to strike at the conclusion of the hearing.~~ Evidence should be taken by the Board to assist the parties' development of the record, not excluded to frustrate that development. The presiding officer is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any evidence. The presiding officer, with or without objection, may exclude evidence that is irrelevant, immaterial, unduly repetitious, or inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. The Board shall give effect to rules of privilege recognized by law. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of serious affairs. When proceedings will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form. The Board's experience, technical competence and specialized knowledge may be used in evaluation of the evidence. ~~(4-5-00)()~~

02. Documentary Evidence. Upon request, parties shall be given an opportunity to compare the copy with the whole of the original document. Filing of a document does not signify its receipt in evidence, and only those documents which have been received in evidence shall be considered as evidence in the official record of the case. ()

03. Depositions. A deposition may be offered into evidence. ()

04. Prepared Testimony. The presiding officer may order a witness's prepared testimony previously distributed to all parties be included in the record of hearing as if read. Admissibility of prepared testimony is subject to the standards expressed in this rule. ()

025. Objections and Exceptions. Where objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly at the time the evidence is offered. Formal exceptions to rulings are unnecessary and need not be taken. (4-5-00)

06. Evidentiary Rulings. The presiding officer shall rule on the admissibility of all evidence and may grant exceptions to the requirements of this rule in the interest of justice. Such rulings may be reviewed by the Board in determining the matter on its merits. Any evidence ruling may be deferred to the entire Board by the presiding officer or taken under advisement. The presiding officer may receive evidence subject to a motion to strike at the conclusion of the hearing. ()

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037. Offer of Proof. An Offer of Proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained. In any event where the presiding officer rules evidence inadmissible, the party seeking to introduce such evidence must make an Offer of Proof regarding it in order to have such evidence considered by the Board. (4-5-00)

08. Failure to Produce Evidence -- Adverse Inference. The Board may draw an adverse inference when a party or witness fails to produce requested evidence which is reasonably in the party or witnesses's control. ()

118. EXHIBITS (RULE 118).

01. Custody. The Board shall keep all original exhibits in its care and custody unless otherwise provided by law. ()

02. Marking Exhibits. Exhibits will be marked by the presiding officer indicating the sponsoring and offering party. (4-5-00)()

03. Form. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of medium customarily used for them. ()

04. Copies. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. ()

05. Objections. Exhibits identified at hearing are subject to appropriate and timely objection before the close of the hearing. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. ()

119. -- 124. (RESERVED).

125. CONFIDENTIALITY -- PROTECTIVE ORDERS (RULE 125).

The decisions and record in appeals before the Board are public records unless otherwise provided by Title 9, Chapter 3, Idaho Code, or in the event a protective order, consistent with Title 9, Chapter 3, Idaho Code, is issued by the Board requiring that specified parts of the record be kept confidential. A party may file a motion for a protective order showing ~~legal~~ cause why specific information in the record, or likely to become part of the record through discovery or evidence obtained at hearing, should remain confidential. The motion under this rule must ~~be in the form of~~ also contain a statement or sworn affidavit as to the truthfulness of the contents. The ~~taxpayer~~ party requesting a protective order must serve a copy of the request on all other parties and the parties' representatives in accordance with the requirements of this chapter. If any other party opposes the request for a protective order, the party must file a written opposition within ten (10) days of the date of service of the request. The motion for protective order must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgement letter. (4-5-00)()

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126. -- 134. (RESERVED).

135. SCOPE OF APPEAL IN AD VALOREM APPEALS (RULE 135).

In all appeals brought under Section 63-511, Idaho Code, in which the appellant appeals only the value or exempt status established by the board of equalization upon either the land or the improvements on the land, the Board shall have jurisdiction to determine the value or exempt status ~~upon~~ when one (1) or the other is appealed. The Board shall have the power to increase or decrease the value of property in market value appeals regardless of which party appealed. If the Board finds that a property classification is in error, it shall determine the correct classification.

(4-5-00)()

136. -- 139. (RESERVED).

140. DECISIONS AND ORDERS (RULE 140).

01. Submission for a Decision. The proceeding shall stand submitted for decision by the Board after taking of evidence, the filing of briefs or the presentation of oral arguments as may have been prescribed by the Board or the presiding officer unless otherwise specifically provided.

(4-5-00)

02. Post Hearing Evidence. Unless requested by the Board, no posthearing evidence will be accepted ~~unless such evidence was in existence at the time of hearing, is new evidence rather than supportive or cumulative evidence, and could not reasonably have been anticipated or discovered prior to hearing.~~

(4-5-00)()

03. Proposed Orders. ~~When a case stands submitted for~~ Prior to a final decision on the merits the Board may, in its discretion, request proposed findings of fact and conclusions of law from each party.

(7-1-93)()

04. Decisions. Board decisions are binding ~~only for the tax year or years at issue pursuant to Section 63-3813, Idaho Code. In connection with any appeal the Board may sustain, reverse, or modify any decision being appealed.~~ A recommended decision or substantive order shall become final when signed by at least two (2) board members. Any member who dissents or concurs may state their reasons.

(4-5-00)()

05. Evaluation Of Evidence. ~~The Board may use its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.~~

(4-5-00)

065. Service of Orders. Parties shall be notified by mail of any decision or order. Copies of the decision or order shall be served on all parties and the parties' representatives of record.

(4-5-00)

076. Public Inspection. Decisions and orders of the Board shall be open to public inspection.

(7-1-93)

087. Decision of Board. A decision of the Board will be based on the ~~evidence and stipulations made by the parties;~~ official record for the case. ~~When no dispute of facts exists,~~ the decision will be based on conclusions of law made by the Board. The Board shall hear and

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determine appeals as de novo proceedings. Decisions shall contain separately stated findings of fact and conclusions of law upon which the Board's determination is based. (4-5-00)(____)

141. -- 144. (RESERVED).

145. RECONSIDERATIONS -- REHEARINGS (RULE 145).

01. Time for Filing. A party adversely affected by a decision of the Board may move for reconsideration or rehearing within ten (10) days of the time the decision of the Board is mailed ~~to him~~. ~~Motions for reconsideration or rehearing shall, as to form and content, conform to the requirements of Section 045.~~ The petitioner must file a supporting brief making a strong showing of good cause why reconsideration or a rehearing should be granted. In a motion for rehearing where the presentation of additional evidence is ~~planned~~ sought or anticipated, the motion shall include the reason why such evidence was not presented previously. Filing and service thereof shall conform to the requirements set forth in ~~Sections~~ Rules 045 60 and 0461. If the party requesting rehearing so requests, the matter may be determined by the entire Board. If a rehearing by the entire Board is requested and granted it will be conducted at a regular meeting in Boise or a meeting convened for that purpose at Boise or such other place as may be designated by the chairman of the Board. (4-5-00)(____)

02. Consideration. Reconsideration or rehearing may be granted or ordered on the Board's own motion if, in reaching the decision, the Board ~~or presiding officer~~ has overlooked or misconceived some material fact or proposition of law; misconceived a material question in the case; applied law in the ruling that has subsequently changed; or a party is found to have been denied the opportunity for a fair hearing. (4-5-00)(____)

03. Procedure for Reconsideration. Reconsideration is based on the record, unless the Board allows additional evidence and argument. (4-5-00)

04. Procedure at Rehearing. Rehearings will be conducted in accordance with the procedure at regular hearings, subject to the discretion of the Board or the presiding officer. (4-5-00)

05. Answer to Motion for Reconsideration or Rehearing. Within ten (10) days after a motion for reconsideration or rehearing is filed, any party to the proceeding may file an answer in support of or in opposition to said motion. A copy of the answer must be served on other parties and the representatives of record for such parties. (4-5-00)

06. Disposition. A petition for reconsideration or rehearing shall be deemed denied if, within twenty (20) days from the date the petition is received by the Board, no response is made by the Board. (4-5-00)

146. -- 150. (RESERVED).

151. OFFICIAL RECORD (RULE 151).

01. Content. The record ~~shall consist of the original documents, correspondence between the Board and parties, pleadings and papers or photocopies of the originals of said~~

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~~documents, correspondence, photographs, pleadings and papers which have become a part of the official file and a transcript of the hearing, if any. Photocopies of all original documents may be substituted for the originals unless specifically objected to by a party to the proceedings.~~ for a contested case shall include: (4-5-00)()

- a. All notices of proceedings; ()
- b. All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; ()
- c. All intermediate or interlocutory rulings; ()
- d. All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); ()
- e. All offers of proof, however made; ()
- f. All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; ()
- g. All evidentiary rulings on testimony, exhibits, or offers of proof; ()
- h. All taxing authority data submitted in connection with the consideration of the proceeding; ()
- i. A statement of matters officially noticed; ()
- j. All recommended orders, preliminary orders, final orders, and orders on reconsideration; ()
- k. Photocopies of all original documents may be substituted for the originals unless specifically objected to by a party to the proceedings; and ()
- l. The transcript defined in Subsection 151.02. ()

02. Transcript. The official transcript of the hearing will be taken by means of electronic tape recorder. Any party desiring the taking of stenographic notes by a qualified court reporter must request ~~such within ten~~ at least fifteen (15) days before the date set for hearing and must submit to the Board or presiding officer the name of the qualified reporter who is available on the date set for hearing. The party requesting the reporter shall bear the expense of the reporter's fees and if the reporter's transcript is deemed by the Board or presiding officer to be the official transcript of the hearing, the party requesting the reporter shall furnish the Board a transcript free of charge. (4-5-00)()

03. Cost of Transcript. Uncertified ~~tapes of the~~ copies of the transcript tape(s) will be provided at the cost of ten dollars (\$10) per ~~forty five (45) minute~~ tape. (4-5-00)()

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152. -- 154. (RESERVED).

155. SUBPOENAS (RULE 155).

01. Form and Purpose. Every subpoena shall be prepared by the requesting party or at the Board's own motion and shall state the name of the Board and the title of the action, and shall command each person to whom it is directed to attend and give testimony and/or produce the books, papers, documents, or tangible things designated therein at the time and place therein specified. A subpoena may be used for the purpose of discovery or for the purpose of presenting evidence at a formal hearing. (4-5-00)

02. Issuance to Parties. Upon written application of parties, attorneys or other representative authorized to practice before the Board for any party in a proceeding, including a showing of relevance and the reasonable scope of the testimony or evidence sought, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The Board may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought. (4-5-00)

03. Service. Service shall be the responsibility of the requesting party. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one (1) day's attendance and the mileage allowed by law to a witness in civil cases in the district court. (4-5-00)

04. Fees. Witnesses summoned pursuant to subpoena shall be paid by the party at whose instance they appear the same fees and mileage allowed by law to a witness in civil cases in the district court. (7-1-93)

05. Proof of Service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit or acknowledgment of service with the Board. (7-1-93)

06. Quashing. Upon motion made promptly, at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the Board may: (7-1-93)

a. Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or (7-1-93)

b. Condition denial of the motion upon just and reasonable conditions. (7-1-93)

07. Enforcement. If any witness shall fail to properly respond to a subpoena, the Board may petition the district court in and for the county in which the proceeding is pending setting forth the issuance of the subpoena, its proper service and the basis upon which the Board alleges that the witness failed to respond. (7-1-93)

08. Geographical Scope. Such attendance of witnesses and such production of

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evidence may be required from any place in the state of Idaho at any designated place of hearing.
(7-1-93)

156. -- ~~999~~164.(RESERVED).

165. REQUEST FOR WRITTEN TRANSCRIPT (RULE 165).

Upon request of a written transcript, the Board may provide a list of court reporting and transcribing services to the requesting party. Arrangements for preparation of transcript and payment of the fee will be made between the party requesting the transcript and the transcriber. The original tape recorded hearing transcript will remain with the Board until requested by the transcriber, or included in the official record transmitted to the district court. (____)

166. -- 999. (RESERVED).